

Bar of suits  
and exclusion  
of Chapter  
XIII.

**135L.** (1) No suit shall lie against the Secretary of State or Government or any officer of Government in respect of a claim to have an entry made in any record or register that is maintained under this chapter, or to have any such entry omitted or amended, and the provisions of Chapter XIII shall not apply to any decision or order under this chapter.

Appeal.

(2) The correctness of the entries in the record of rights and register of mutations shall be inquired into and the particulars thereof revised, by such Revenue officers and in such manner and to such extent and subject to such appeal as the Governor in Council may from time to time by rules prescribe in this behalf.

## CHAPTER XI.

### OF THE REALIZATION OF THE LAND REVENUE AND OTHER REVENUE DEMANDS.

Liability for  
land revenue.

[<sup>a</sup>] **136.** (1) In the case of unalienated land the occupant, and in the case of alienated land the superior holder, shall be primarily liable to Government for the payment of the land revenue, including all arrears of land revenue, due in respect of the land. Joint occupants and joint holders who are primarily liable under this section shall be jointly and severally liable.

(2) In case of default by any person who is primarily liable under this section, the land revenue, including arrears as aforesaid, shall be recoverable from any person in possession of the land :

provided that where such person is a tenant, the amount recoverable from him shall not exceed the demands of the year in which the recovery is made ;

provided further that, when land revenue is recovered under this section from any person who is not primarily liable for the same, such person shall be allowed credit for any payments which he may have duly made to the person who is primarily liable, and shall be entitled to credit, for the amount recovered from him, in account with the person who is primarily liable.

[a] This section was substituted for the original section Bom. IV of 1913, s. 67.

*N. 1.* This section makes the occupant primarily responsible for "all arrears."

*N. 2.* Vide Section 185.

*G. 1.* Can revenue be recovered from co-sharers when the principal sharer is willing to pay.—The eldest superior-holder of an Inam village maintained that no part of the revenue in respect of the shares of his co-sharers should be received by Government direct from them as he was responsible for the payment of the revenue of the whole village under Section 136 of the Land Revenue Code. The co-sharers on the other hand alleged that they were also superior holders in respect of their shares and that the revenue of those shares should be levied from them direct. In connection with this case the following questions were referred for the orders of Government :—

1. When there is more than one superior holder, can Government under Section 136 hold the eldest or principal superior holder primarily responsible for the payment of Government revenue ?

2. If so, can they refuse to accept Government revenue from any other superior holder, should he be ready and willing to pay it?
3. In the event of the right of a junior superior holder to pay his share being recognized, would it be open, in the case of default of Government revenue to the principal sharer to say that he could not be held primarily responsible as Government had already held others to have the right of direct payment and he was no more a superior holder than they were?

These questions were disposed of by Government orders to the following effect :—

The Land Revenue Code does not expressly provide for the registration of the principal of the several co-holders of alienated land, and for the registered holder alone being ordinarily recognized by the Collector in matters affecting the revenue of the land. It has always been the practice; however, to register only the name of the principal holder of alienated land and for the Collector to look primarily to the registered holder for the payment of revenue. This is an arrangement necessary in the interests of Government, for it is obviously much more convenient that the Collector for the purposes of collecting the land-revenue should have to recognize only one registered holder in respect of each holding, than that he should have to call upon each of the several co-sharers (some of whom often hold very minute shares) to pay his quota of the revenue. That the legislation of the system was intended by the Code is clear from paragraph 2 of Section 136. In this it is enacted that "on failure of the person primarily responsible to Government for the land-revenue," that revenue may be recovered "from the co-occupant of unalienated land or the co-sharer of alienated land." This provision places co-occupants of unalienated land and co-sharers of alienated land in

corresponding positions ; and the use of the words " co-sharers of alienated land " would be meaningless, if the term " the superior holder " as used in paragraph 1 of the section where he is said to be primarily responsible for the revenue of alienated land were meant to include co-sharers as well as the principal or registered superior holder. So also Section 79 shows that the registration of holders of alienated land as well as occupants of unalienated lands was in the mind of the legislature, and from a comparison of Section 76 with paragraph 2 of Section 74 it is clear that registration of only the principal holders of alienated land was intended.

The last of the three questions above referred to indicates one class of difficulty which may arise if the long established practice of holding registered superior holder of alienated land alone responsible primarily for the land-revenue of his holding is abandoned. The only safe course therefore is for that practice to be maintained, at any rate as long as a registered holder is willing to pay the whole amount due on his holding. If he makes default, the Collector can recover, under paragraph 2 of Section 136 of the Land Revenue Code, from his co-sharers.

When the Code comes under revision the opportunity will be taken of making its provisions more clearly conform to the established practice and it will be easier to do this if in the meantime no departure from the existing practice has been made. (G. R. No. 5519, dated 12th August 1891 )

**G. 2. Responsibility of payments:—**The effect of the High Court decision at Indian Law Reports, IV Bombay, 79, is that if a person voluntarily makes a payment on account of land which belongs to some body else, he is not thereby entitled, in the absence of contractual relations with that other, to recover such payment from him. The ruling does not prevent Government from recovering from



each holder, but only decides that if one holder pays for the land of another independent holder, he does so at his own risk and cannot recover unless there is a contract to that effect. The proper course is for the holder, who is made to pay for land not in his holding, to ask Government to recover from the real holder instead. (G. R. No. 4174, dated 10th June 1898.)

G. 3. Chapter XI when applicable to Inam villages:—The Collector cannot use any of the powers under Chapter XI of the Code in realizing Inamdar's dues from their inferior holders, except upon an application under Section 86 or upon reference under Section 90, in the case of an Inamdar who is the holder of a commission under Section 88. (G.R. No. 1493, dated 24th February 1904).

J. 1. Where the actual amount of revenue remitted by money-order reached the Collectorate in time, but the remitter made a mistake in the towji number and the name of the registered proprietor, but was right as to the name of estates and the amount of revenue payable in respect thereof. *Held*, that it was the duty of the officer of the Collectorate to rectify the mistake.....and not to put up the property to sale which, if held, would be without jurisdiction and ought to be set aside. (*Hamid Hossen V. Mukhdum Reza* 1905 I. L. R. 32 Calcutta p. 229.)

Claims of Government to have precedence over all others.

**137.** The claim of Government to any moneys recoverable under the provisions of this chapter shall have precedence over any other debt, demand, or claim whatsoever, whether in respect of mortgage, judgment decree, execution, or attachment, or otherwise howsoever, against any land or the holder thereof.

N. 1. The meaning of this section is illustrated by the following example :—

A holds Land assessed at Rs. 10 which has a mortgage charge of Rs. 100.

2. If A has not paid Rs. 10 as land revenue due in respect of the land, the land itself can be forfeited to Government free of the mortgage charge. (sections 56 and 153.)

3. But if there is no arrear of land revenue due in respect of the land and if A owes to Government Rs. 100 on account of a toll contract which is recoverable as *an arrear of land revenue* under section 187, the land cannot be forfeited free of the mortgage charge under section 153, but only the right title and interest of A in this land can be sold under section 155. The bidders at the auction will therefore be responsible to the mortgagee for Rs. 100. If he bids Rs. 50 he will have to satisfy the mortgagee's claim of Rs. 100 in addition to Rs. 50. Thus the real value of the land is Rs. 150 although the highest bid is for Rs. 50.

4. If a Civil Court sells the right title and interest of A in the land in execution of a decree obtained by the mortgage the land will fetch Rs. 150 and the amount will be in the custody of the Court.

5. If the Collector wants to get Rs. 100 on account of the toll contract from the Civil Court out of Rs. 150 he will have to appear before the Court by a pleader and to obtain an order to that effect. Simply a letter or a certificate to that effect to the Court will not do.

(Vide G. I under this section).

N. 2. Generally priority of Government claims is regulated in the following order.

- (1) Land revenue for the current year—this has priority of claim on the crop. (section 138 and 140).
- (2) Land revenue for past years.
- (3) Tagai under the Land Improvement Act.
- (4) Tagai under Agriculturists Loans Act.
- (5) Irrigation rates.

- (6) Claims of other departments such as Abkari, forest etc.

N. 3. Vide section 151 of the Code and the note under it.

G. I. A Civil court attaching agricultural produce or other moveable property of persons liable for the payment of land revenue.

One G had made a default in paying Government dues amounting to Rs. 146. His share in an Inam village to extent of Rs. 337 was attached and deposited in court by a Sub-Judge in pursuance of a decree passed against him. A Mamalatdar sent to the Sub-Judge a statement of accounts certified under section 149 L. R. C, by Prant Officer and requested him to satisfy the land revenue demand from G's share then in the hands of the civil court. The Sub-Judge replied to the Mamalatdar that he should formally make an application through the Government Pleader in the open court for removing the attachment and that orders regarding payment would be then passed on hearing both the parties.

Government thereupon sent the following draft rules for the approval of the High Court:—

1. (To be entered as rule 44-A of order 21 in the first schedule to the Code of Civil Procedure, 1908.)

'Where the property to be attached is agricultural produce and the judgment-debtor is a person liable for payment of land revenue, a copy of the warrant or order of attachment shall be sent to the officer of the Collector of the district in which the judgment-debtor resides.'

2. (To be inserted as rule 63 A of Order XXI).

(a) Where a court has attached any property of a person who is liable for the payment of land revenue, the court, on receipt of a certificate in the form hereinafter mentioned and a notice from the Collector to the effect that an arrear of land revenue or a sum recoverable as an arrear of land revenue is payable to Government by such person, shall pass

an order directing that the claim of Government shall after the expenses of sale (if such property is to be sold) have been defrayed, be satisfied out of the property in preference to any other claims, and effect shall be given to the order accordingly.

(2) The certificate above referred to shall state:—

(a) The name of the defaulter and such other particulars as may be necessary for his identification;

(b) The amount payable by him and the account on which it is due;

(c) That the said amount is recoverable as an arrear of land revenue.

(3) Such certificate shall be signed by the Collector and shall be sufficient authority to the court.

In reply, the hon. the Chief Justice and Judges informed Government as follows:—

The first draft rule will soon be considered by the Rule Committee.

As to the second draft rule, we regret that we cannot agree to it, that is to say, that on a mere certificate of the Collector assests realized in execution should be held without further enquiry to be, wholly or partly, the property of Government. The interests of many decree-holders entitled to rateable distribution may be concerned, and might be prejudiced by such a rule. It is therefore open to the Collector to appear before the court by a pleader and to obtain such an order as the court is legally empowered to pass in favour of Government. (G. R. R. D. Nos. 13 of 3rd January 1913 and 9188 of 23rd of September 1916.)

**138.** In all cases the land revenue for the current year of land used for agricultural purposes, if not otherwise discharged, shall be recoverable, in preference to all other claims, from the crop of the land subject to the same, The liability of the crop for the revenue of the land.

**G. 1. Current year's revenue to have precedence :—**The practice of crediting the amount of land revenue collected in the first instance against any arrears which may be due for former years should be discontinued. The demand of the current year should first be met and the arrears of former years should, if possible, be recovered afterwards. ( G. Rs. No. 727, dated 28th January 1885 and No. 80, dated 6th January 1905.)

**G. 2. Land revenue for the current year.**

This expression includes suspended revenue payable in that year as well as revenue for that year. ( G.R. No. 6461 dated 14th June 1915 )

Land revenue may be levied at any time during the revenue year.

**139.** The land revenue shall be leviable on or at any time after the first day of the revenue year for which it is due; but, except when precautionary measures are deemed necessary under the provisions of sections 140 to 144, payment will be required only on the dates to be fixed under the provisions hereinafter contained.

removal of crop which has been sold etc., may be prevented until revenue paid.

**[<sup>a</sup>]140.** When the crop of any land or any portion of the same is sold, mortgaged or otherwise disposed of, whether by order of a Civil Court or other public authority or by private agreement, the Collector may prevent its being removed from the land until the demands for the current year in respect of the said land have been paid, whether the date fixed for the payment of the same under the provisions hereinafter contained, has yet arrived or not.

But in no case shall a crop or any portion of the same, which has been sold, mortgaged or otherwise disposed of, be detained on account of

## No. 63

Section 138—

*Substitute the following for G.1 :—*

“Land revenue recovered before the date of the first instalment should be credited against the arrears of past years, if any. Revenue recovered on or after the date of the first instalment, should first be credited against the demand of the current year and the balance, if any, against the arrears of previous years.”

(G.R. No. 5387/28, dated 16-3-1932.)

more than the demands of the year in which the detention is made.

[a] This section was substituted for the original section by Bom. IV of 1913, s. 68.

*N. 1.* The new section is necessitated by the system of granting suspensions of land revenue in years of scanty rainfall. Amounts suspended in one year became part of the next year's demand if the next year's crops are good, and in the recovery of such sums Government are entitled to the same measure of protection as in the recovery of land revenue which has not been suspended.

*G. 1.* Inapplicability to water rates.—Over due water rates payable under Section 57 of the Irrigation Act (VII of 1879) can only be recovered like *arrears* of land revenue, and the provisions of Sections 140-145 of the Land Revenue Code for securing the recovery of land revenue by measures to be taken before it is in arrear are, therefore, not applicable to such water rates. (G. R. No. 2882, dated 9th April 1885.)

*G. 2.* Delegation of powers under Sections 140 to 143 and 145 :—The Collectors and Deputy Commissioners may delegate their powers under Sections 140 to 143 and 145 to such Mamlatdars and Mukhtyarkars as may be considered best fitted to exercise them. The delegation should not be made as a matter of course ; the choice of the officer to be entrusted should be made after careful selection. (Serial No. 1 of statement accompanying G. R. No. 8046, dated 7th August 1908 and G. R. 5295, dated 1st June 1911 item 62.)

*G. 3.* Powers under Sections 140 to 143 and 145 should be expressly delegated to each Mamlatdar when newly appointed to a Taluka. (G. R. No. 7773, dated 21st August 1913.)

*G. 4.* Powers under Sections 140 to 143 and 145 are not to be exercised by Mamlatdars unless they have been specially delegated to them by the Col-

lector. Delegation of the powers of a Collector to Mamlatdars, Mahalkaris etc. under Sections 86 and 87, does not carry with it delegation of all the powers of a Collector under Chapter XI of the Code. A Mamlatdar cannot, therefore, dispose of an application for assistance by way of precautionary measures under Section 86 unless he has been delegated the necessary powers under Section 140. (G. R. No. 239, dated 10th January 1914.)

In order to secure the land revenue the Collector may prevent the reaping of the crop,<sup>20</sup> or

**141.** It shall be lawful for the Collector, in order to secure the payment of the land revenue by enforcement of the lien of Government on the crop—

(a) to require that the crop growing on any land liable to the payment of land revenue shall not be reaped until a notice in writing has first been given to himself or to some other officer to be named by him, in this behalf, and such notice has been returned endorsed with an acknowledgment of its receipt;

the removal thereof, or

(b) to direct that no such crop shall be removed from the land on which it has been reaped, or from any place in which it may have been deposited, without the written permission of himself or of some other officer as aforesaid;

place watchmen over it.

(c) to cause watchmen to be placed over any such crop to prevent the unlawful reaping or removal of the same, and to realize the amount required for the remuneration of the said watchmen, at such rate not exceeding the rate of pay received by the peons on his establishment as he may deem fit, as an arrear of



land revenue due in respect of the land to which such crop belongs.

**G. 1. Inamdar's power to take precautionary measures and to attach property.**—An Inamdar who holds a commission conferring upon him the power described in clause (a) of Section 88 of the Land-Revenue Code is entitled to take "such precautions as the Collector is authorized to take under Sections 141 to 143." Referring to Section 138 of the Code it appears that the Collector is only authorized to take precautions under Sections 141 to 143 for the recovery of the land-revenue of the current year and Inamdar's power is similarly restricted.

The power to attach property conferred upon an Inamdar under clause (a) of Section 88 of the Code is not restricted by any reference to any other section or provision of that enactment, and there is no reason for holding that the Inamdar is bound to issue a notice of his demand before proceeding to attach his defaulter's property. There can be no legal objection to his sending a preliminary notice to the defaulter if he thinks fit to do so; such a course would be commendable, but it is not obligatory, and the Inamdar would not be entitled afterwards to recover as a revenue demand the cost of issuing and serving such notice. (G. R. No. 2901, dated 15th April 1886).

**G. 2.** The forms of orders to be issued under this section have been sanctioned by Government in their Resolution No. 674, dated 27th January 1891, and are printed as Appendix 22.

**G. 3. Precautionary measures in extreme cases only:**—As a rule, recourse should only be had to the precautionary Sections 141 and 142 of the Land Revenue Code in extreme cases; an indiscreet use of the powers given by them would lead in many cases to great hardship. (G. R. No. 680, dated 30th January 1892.)

**G. 4. The effect of prompt measures for attachment.**—The provisions of Section 140 and the last sentence of Sections 145 also make it clear that Sections 141-143 are intended to be used only in the case of current demands. In regard to the revenue for the past year, the Collector can recover as arrear by attachment and sale of the crops (balance after paying the current year's demand) as immoveable property under clause (d) of Section 150 if they are standing and (c) if they are reaped.

If the Collector takes prompt measures for the attachment by separate process on account of arrears of the balance of the crop which is realised on recovery of revenue due for the current year, the result would probably be much the same as if Sections 141-143 were resorted to with regard to the whole claim. (G. R. No. 498, dated 24th January 1903)

**G. 5. Vide G. 2. under Section 138.**

Collector's orders under last section how to be made known.

**142.** The Collector's orders under either clause (a) or clause (b) of the last preceding section may be issued generally to all the holders of land paying revenue to Government in a village, or to individual holders merely.

If the order be general, it shall be made known by public proclamation to be made by beat of drum in the village and by affixing a copy of the order in the chavdi or some other public building in the village. If it be to individual holders, a notice thereof shall be served on each holder concerned.

Penalty for disobedience of order.

Any person who shall disobey any such order after the same has been so proclaimed, or a notice thereof has been served upon him, or who shall, within the meaning of the Indian Penal Code, abet the disobedience of any such order,

shall be liable, on conviction after a summary inquiry by the Collector, to a fine not exceeding double the amount of the land revenue due on the land to which the crop belongs in respect of which the offence is committed.

**G. 1. General prohibitions under special sanction.**—General prohibitions not to remove crops without previous permission should not be resorted to for the collection of the revenue without the special sanction of the Collector, which will only be given after careful consideration in each instance. (G. R. No. 118, dated 7th January 1888.)

**G. 2.** For disposal of fines imposed upon an inamdar's tenant under Section 142 Vide. (G. R. No. 6513, dated 6th July 1909.)

**J. I.** Bombay High Court decision on a reference by the District Magistrate of Poona.—In order to secure the payment of land revenue, the Collector of Poona had issued orders to the Mamlatdar to collect land revenue for 1906-07, by precautionary measures, wherever necessary. On the authority of this order, the mamlatdar of Indapur issued a general notice to all the holders of land, paying revenue to Government in the village of Kazad, directing them not to remove the crops growing on the land without the written permission of the mamlatdar. The accused removed from his field on the 4th November, 1906, the crop of bajri, etc., without such permission and disposed of it. For this act the mamlatdar accorded his sanction for the prosecution of the accused under Section 188 I. P. Code. Mr. Carmichael remarked that the conviction by Mr. Modnimbkar seemed to be illegal. He, in his capacity of Mamlatdar, accorded his sanction for the prosecution of the accused and tried the case himself. Mr. Modnimbkar was disqualified from trying the accused, for the offence was one mentioned in section 195 of the Criminal

Procedure Code, and it had been committed in contempt of his own authority. The accused had paid the fine. Mr. Carmichael recommended that the conviction be set aside, and the fine refunded.

Their Lordships quashed the conviction and sentence, and ordered the fine to be refunded. (Published in the "Times of India," dated 24th July 1917.)

Reaping,  
etc., not to  
be unduly  
deferred.

Crop when  
to be re-  
leased.

**143.** The Collector shall not defer the reaping of the crop, nor prolong its deposit unduly, so as to damage the produce; and if within two months after the crop has been deposited the revenue due has not been discharged, he shall either release the crop and proceed to realize the revenue in any other manner authorized by this chapter or take such portion thereof as he may deem fit, for sale under the provisions of this chapter applicable to sales of moveable property in realization of the revenue due and of all legal costs, and release the rest.

Tempo-  
rary  
attach-  
ment and  
manage-  
ment of a  
village or  
share of a  
village.

**144.** If owing to disputes amongst the sharers, or for other cause, the Collector shall deem that there is reason to apprehend that the land revenue payable in respect of any holding consisting of an entire village or of a share of a village will not be paid as it falls due, he may cause the village or share of a village to be attached and taken under the management of himself or any agent whom he appoints for that purpose.

Powers of  
manager,  
and dis-  
posal of  
surplus  
profits.

The provisions of section 160 shall apply to any village or share of a village so attached, and all surplus profits of the land attached, beyond the cost of such attachment and management, including the payments of the land revenue and

the cost of the introduction of a revenue survey, if the same be introduced under the provisions of section 111, shall be kept in deposit for the eventual benefit of the person or persons entitled to the same, or paid to the said person or persons from time to time as the Collector<sup>[a]</sup> may direct.

[a] Words repealed by Bom. IV of 1905, 2nd Sch., are omitted.

*N. I.* As regards Government dues they can be recovered direct from the subsharers and inferior holders in accordance with G. R. No. 9920 dated the 21st December 1904. R. D. It, therefore, seems unnecessary to attach the village under section 144 of the Land Revenue code.

*G. I.* Recovery of rent and revenue due to estates of which the collector is the official guardian. A collector is in charge of an estate

- (a) under the Courts of Wards Act
- (b) under the Guardians and Wards Act
- (c) under the Land Revenue Code and
- (d) under the Khoti Settlement Act

2 As to the recovery of rent etc. under classes (a), (c), (d) a Collector has remedies under section 29 of Court of Wards Act, under section 160, and under section 187 of the Land revenue code respectively.

3 As to the recovery of rent etc. under class (b) the collector should recover them in the same way as under section 29 of Court of Wards Act (G. R. No. 2566. dated 19th March 1910).

**145.** The precautionary measures authorized by the last five sections shall be relinquished if the person primarily responsible for the payment of revenue or any person who would be responsible for the same if default were made by the person primarily responsible shall pay the costs, if any, lawfully incurred by the Collector up to the time of such relinquishment, and shall

Precautionary measures to be relinquished on security being furnished.

furnish security satisfactory to the Collector for the payment of the revenue, at the time at which, or in the instalments, if any, in which it is payable under the provisions hereinafter contained.

*N. I.* Vide G. 2, G. 3, and G. 4 under Section 140.

*G. I.* The form of security-bond to be furnished under this section has been sanctioned by Government in their Resolution No. 674, dated 27th January 1891, and is printed as Appendix 23.

*G. 2.* Security bonds should usually be taken only from large and solvent rayats in which there may be some doubt about their willingness to pay. Full discretion is vested in Collectors to do as they think fit on the subject. (G. R. No. 6954, dated 11th December 1875.)

Government to determine the dates, etc., on which land revenue shall be payable.

**146.** Land revenue, except when it is covered under the provisions of the foregoing sections 140 to 144, shall be payable at such times in such instalments, to such persons and at such places as may from time to time be determined by the orders of Government.

Arrear.

Defaulters.

[<sup>a</sup>]**147.** Any sum not so paid becomes thereupon an arrear of land revenue, and the persons responsible for it, whether under the provisions of section 136 or of any other section, become defaulters.

[<sup>a</sup>] As to the local modification of section 147, see para. 5 of foot-note [<sup>a</sup>] on p. I, *supra*.

*N. I.* In the Revenue Recovery Act I of 1890, which extends to the whole of British India, the word "defaulter" is defined to mean "a person from whom an arrear of land-revenue is due," and to include "a person who is responsible as surety for the payment of any such arrear or sum."

[a] **148.** If any instalments of land revenue be not fully paid within the prescribed time, <sup>Liabilities incurred by default.</sup> it shall be lawful for the Collector to impose as a penalty or as interest such charge on such instalments, and on the arrears, if any, of former years, as may be authorised according to a scale to be fixed from time to time under the orders of the Governor in Council, and further to proceed to levy at once the entire balance of land revenue due by the defaulter for the current year :

Provided that no such charge shall be imposed on any instalment, the payment of which has been suspended by order of Government, in respect of the period during which the payment remained suspended.

[a] This section was substituted for the original section by Bom. IV of 1913, s. 69.

### SUMMARY (S. 148.)

S. 148 Scope of new Section ...	...	N 1
Penalty—(1) Assistance cases...	...	G 3
(2) Leviable when ...	...G 2, 4, 7	
(3) Maximum ...	...	G 1
(4) Notice of demand ...	...	N 2
(5) Powers of ...	...	
(a) Mamlatdars ...	...	G 5
(b) Subdivisional officers ...	...	G 6
(6) Suspended arrears ...	...	N 4
(7) Tagai arrears ...	...	N 3

N. 1. This new section extends the scope of old section 148 so as to allow the imposition of a charge as a penalty or by way of interest on unauthorised arrears of past years as well as on arrears of the current year. The section as it formerly stood limited this claim to arrears of the

current year, but there is no reason in equity why Government should not claim interest on arrears of past years also.

*N. 2.* From the wording of section 148 of the Land Revenue Code and from paragraph 5 of Mr. Cardeaux' Memo No. 1532 dated 21st November 1882 quoted in the last paragraph of the preamble of G. R. No. 2485, dated 27th March 1883, it appears that a penalty is to be first imposed in the case of rayats who are known to be able to pay but wilfully delay to do so, and that it will only be necessary in the subsequent notice of demand to insert between the words "together with" and "the sum of" the following words, namely, "the sum of Rs. —penalty (or interest as the case may be) and."

*N. 3.* Under this section penalty can be imposed for non payment of Tagai &c. recoverable as an arrear of land revenue and the penalty will have to be credited to the department or head to which the principal amount is credited. Only the notice fees should go to the Revenue Department making the recovery.

*N. 4.* Suspended arrears fall under "land revenue due for the current year." (Vide G. 2 under Sec. 138.) The proviso at the end of this section that no penalty should be imposed on suspended arrears was added after a good deal of discussion in the Legislative Council.

*G. 1. Maximum Penalty.*—A maximum penalty not exceeding  $\frac{1}{4}$ th of the amount of land-revenue over-due should be fixed and resort had to the provisions of this section in the case of the rayat who is known to be able to pay but wilfully delays to do so. The penalty imposed may be remitted if the officer imposing it afterwards finds that the rayat was not able to pay punctually. (G. R. No. 2485, dated 27th March 1883.)

*G. 2.* Interest or penalty under Section 148 of the Land Revenue Code should be levied only in



cases of proved contumacy. (G. R. No. 194, dated 9th January 1884.)

**G. 3. Levy of penalty in alienated villages and its disposal.**—In cases where assistance is given by revenue officers for the recovery of revenue due to holders of alienated villages, or othersuperior holders, if any penalty is ordered and levied under this section for default in punctual payment of revenue, it should be paid over to the superior holder. The Collector need not levy any penalty under this section, except in cases where he may consider that the superior holder is entitled to something more than his bare rent. (G. R. No. 9586, dated 4th December 1884 and G. R. No. 5780, dated 24th May 1915 )

**G. 4. Failure to pay until compelled** should not meet with impunity in years when there are no special circumstances excusing it. (G. R. No. 6680, dated 25th October 1900.)

**G. 5. The power imposing  $\frac{1}{4}$ th fine** is delegated to Mamlatdars. (G. R. No. 5295, dated 1st June 1911.)

**G. 6. Subdivisional officers have power to assess or to remit  $\frac{1}{4}$ th penalty.** (G. R. No. 5295, dated 1st June 1911.)

**G. 7. The provisions of this section are not to be neglected either in Government or alienated villages to the encouragement of contumacy.** (G. R. No. 6288, dated 4th July 1911.)

**149.** A statement of account, certified by the Collector or by an Assistant or Deputy Collector, shall, for the purposes of this chapter, be conclusive evidence of the existence of the arrear of the amount of land revenue due, and of the person who is the defaulter.

On receipt of such certified statement, it shall be lawful for the Collector of one district to proceed to recover the demands of the Collector of any other district under the provisions of this

Certified account to be evidence as to arrears.

Collectors may realize each other's demands.

chapter as if the demand arose in his own district.

A similar statement of account certified by the Collector of Bombay may be proceeded upon as if certified by the Collector of a district under this Act.

*N. I.* Before the passing of the Revenue Recovery Act (I, of 1890) the Collector of a district in the Bombay Presidency could not,† under the provisions of the Code, proceed to recover an arrear of land-revenue due on lands situated in a district belonging to any other Presidency. This difficulty has now been removed by the above mentioned Act. This Act extends to the whole of British India, and under Section 3 thereof the Collector of a district in one Presidency can recover an arrear of land-revenue due on lands situated in a district belonging to any other Presidency.

Section 3 of the Act (I, of 1890) runs as follows:—

(1) Where an arrear of land-revenue, or a sum recoverable as an arrear of land-revenue, is payable to a Collector by a defaulter, being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate§ in the form, as nearly as may be of the Schedule, stating—

(a) the name of the defaulter, and such other particulars as may be necessary for his identification, and

(b) the amount payable by him and the account on which it is due.

(2) The certificate shall be signed by the Collector making it, and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(3) The Collector of the other district shall, on receiving the certificate, proceed to recover the

amount stated therein as if it were an arrear of land-revenue which had accrued in his own district.

† In a case where the Collector of Bellary (a district in the Madras Presidency) had requested the Collector of Dharwar to recover from certain persons in the Dharwar district arrear of land-revenue due on lands in the Bellary district, Government decided that the Land Revenue Code being applicable only to the Bombay Presidency, the Collector of Bellary was not a Collector within the meaning of Section 149 nor the land-revenue due on lands in the Bellary district the land-revenue within the meaning of Section 187 and that therefore the Collector of Dharwar could not proceed under the Code to recover the arrears, though he might use his influence for the recovery thereof (G. R. No. 2877, dated 21st May 1881.)

§ *Vide* appendix 26.

**G. 1. Recovery outside British India.**—Revenue cannot be realized outside British India by coercive process. (G. R. No. 3302, dated 20th April 1894.)

**G. 2. Recovery of other than land-revenue in another Collectorate.**—It is necessary to send a certificate under Section 31 of the Revenue Recovery Act when any amount recoverable as land-revenue (but not necessarily itself land-revenue) due in one district is to be recovered from a person residing in any other district of the Bombay Presidency to which the Land Revenue Code applies, (G. R. No. 552, dated 29th January 1901.)

**G. 3. Mamlatdars can forward certificates under this section to other Mamlatdars.** (G. R. No. 5295, dated 1st June 1911.)

**150.** An arrear of land revenue may be recovered by the following processes ;—

Process for recovery of arrears.

(a) by serving a written notice of demand on the defaulter under section 152 ;

[<sup>a</sup>](b) by forfeiture of the occupancy or alienated holding in respect of which the arrear is due under section 153 ;

(c) by distraint and sale of the defaulter's moveable property under section 154 ;

- (d) by sale of the defaulter's immoveable property under section 155 ;
- (e) by arrest and imprisonment of the defaulter under section 157 and 158 ;
- [b](f) in the case of alienated holdings consisting of entire villages, or shares of villages, by attachment of the said villages or shares of villages under sections 159 to 163.

[a] As to the local repeal of section 150, cl. (b), see para. 4 of foot-note [a] on p. I, *supra*.

[b] As to the local modification of section 150, cl. (f) see paras. 4 and 5 of foot-note [a] on p. I, *supra*.

### SUMMARY (S. 150.)

Coercive processes—	(1) Mode of adopting	N 2
	(2) Quarterly return discontinued ...	N 1
	(3) When a person lives in a Native State ...	G 2
Distrain—	(1) Preliminaries of ...	G 5
	(2) Property in the possession of a Civil court...	N 3, G 4
Forfeiture—	Of a whole khata when made	G 1
Notice—	Service between Nizam and Bombay Governments ...	G 3

*N. 1.* A quarterly return of coercive processes from the register in Appendix 24, was prescribed by G. R. No. 4477, dated 1st July 1902, but this return was subsequently discontinued by G. R. No. 6204, dated 4th July 1912.

*N. 2.* Any of the processes may, at the discretion of a Revenue officer, be adopted first except that a Mamlatdar, Mahalkari or Head Karkun is bound to issue first a notice of demand. (*Vide* No. 2 under S. 152.)

## No. 65

### *Sections 150 and 152—*

(1) *For* N. 2 on page 466 of the Code *substitute* the following : -

“ The issue of a notice under section 152 is not compulsory before any other kind of coercive process is undertaken.”

(2) *Delete* the word “ first ” occurring in line 1 of N. 2 on page 471 of the Code.

(G.M. No. 6557-B/28, dated 16-1-1931.)

N. 3. G. 4 under this section should be read with G. 1 under Section 137.

G. 1. Arrears of land-revenue, how to be apportioned when the revenue of some of the survey numbers of a defaulter has been paid—It is only the occupancy or alienated holding *in respect of which an arrear of land revenue is due*, that can be forfeited under Sections 150 (b) and 153. And it is only the right, title and interest of the *defaulter* in any immoveable property other than the land on which arrear is due that can be sold under Sections 150 (d) and 155. Neither Section 56 nor Section 150 (b) nor Section 153 legalises the forfeiture and sale of any other land but the occupancy or alienated holding in respect of which the arrear of land-revenue is due (compare I. L. R. XV., Bombay 67). It may, in some cases, be impossible to assign an arrear of land-revenue to one particular survey number out of several entered in the name of one registered occupant, as, for instance, if one instalment of the Land revenue due on all those numbers has been paid and the other instalments left unpaid, in such a case all the survey numbers in respect of which the second instalment was unpaid could be forfeited under Section 153 unless any of the holders or other persons interested availed themselves of the right given by Section 80. But even in such a case the Collector can act under rule 58 (now 60). But the *latter declaration* (under Section 155) is to be used "in cases of necessity," a *provision having the force of law*.

When an alienated holding is legally declared forfeited to Government, the land can be fully assessed, just as in the case of a resumption of an *inam* by Government (compare I. L. R. IX Bom. 419). (G. R. No. 4567, dated 30th June 1899.)

G. 2. Remedy where revenue cannot be recovered as a Land Revenue Demand.—In a case where Forest Revenue could not be realized as a revenue demand, or the purchaser lived in a native

State, Government ruled that a suit should be filed in the court within whose jurisdiction the cause of action arose, service of summons being effected under the Civil Procedure Code. On a decree being obtained, execution will be obtained by transfer of the decree to the proper court.

If the debtor appears in the British territory he should be detained till he gives security to appear and answer any decree that might be passed against him. (G. R. No. 7103, dated 20th September 1889.)

**G. 3. Service free of charge by Nizam Government and Bombay Government.**—Service of notices for the recovery of land-revenue, issued to defaulters by the Nizam Government as also by the British Government, should be free of charge. (G. R. No. 2610, dated 15th April 1890.)

**G. 4. Distraint of property in the possession of the Court.**—There is no apparent reason why distraint by a Collector under the Bombay Land Revenue Code, 1879, should not be extended to the property of a defaulter in the custody of a public officer, or even of a Court, though the Collector could not proceed by way of prohibitory order or notice under the provisions of the Code of Civil Procedure, but only by actual seizure, pending which there could be no attachment invalidating alienations.

The Court in which or the public officer in whose custody such property is deposited would apparently be protected in offering no opposition to such seizure or distraint, by a statement of account certified by the Collector under section 149, Bombay Land Revenue Code, 1879, which renders such statement conclusive evidence of the arrears of the amount of land revenue due and of the person who is the defaulter.

The distraint, however, could not be effected by a written order of the Court or officer and it is somewhat difficult to see how the distraint could be effected without the concurrence of such court or

officer concerned, though active resistance to the taking of the property by the lawful authority of a public servant duly authorized under section 154, Bombay Land Revenue Code, would apparently be illegal and punishable under section 183, Indian Penal Code. (G. R. No. 369 of 18th January 1901.)

**G. 5. The preliminaries of a distraint.**—The following general orders are issued for the guidance of Collectors and other officers concerned :—

1. It should be clearly intimated to taluka authorities, as well as to all village officers, that in each and every case before making any distraint an express order must be obtained from the Mamlatdar, Mahalkari or other officer, duly empowered under Section 154, and any violation of this rule by the village officers will meet with severe punishment. When asking for orders in such cases the village officers should state the amount of arrears due, the approximate outturn of the defaulter's crop, the extent of his general means, and the reasons for supposing him to be contumacious. In proposing the attachment of cattle, the area of the holding and the number of cattle that will remain should be noted.

2. A separate register should be kept in every village of all distraints made by the village officers, with a note of the orders authorising the same. An abstract of the entries in this register should be forwarded annually to the taluka to form the basis of Jamabandi Form No. 9. The village register\* of coercive processes and the taluka returns should be most carefully examined by Assistant or Deputy Collectors and compared with the various cases with the object of securing that all cases of distraint are brought on record, and no distraints are made without full legal authority.

\* The form of this register was prescribed by G. R. No. 4477, dated 1st July 1902. (*Vide* Appendix 24.)

3. The attachment of such articles as cots, children's cradles, household utensils, grinding



stones, and the like should not be permitted in future, except with the permission of the sub-divisional officer, which should be given only when a special reason, such as removal of more valuable property is shown. (G. R. No. 8932, dated 23rd December 1901.)

Revenue demands of former years how recoverable.

**151.** The said processes may be employed for the recovery of arrears of former years as well as of the current year, but the preferences given by sections 137 and 138 shall apply only to demands for the current year.

Proviso,

Provided that any process commenced in the current year shall be entitled to the said preferences, notwithstanding that it may not be fully executed within that year :

*N. I.* No reference to sec. 148 is made in sec 150. It is therefore doubtful whether the penalty specified in sec. 148 will be entitled to preference given by sec. 137 if it is not first demanded in the year in which the land revenue was due. For instance, if a contumacious Marwari withheld revenue in 1907-08 the  $\frac{1}{4}$ th penalty on that revenue will not have the preference under sec. 137, in 1909-10 unless it was not demanded in 1907-08.

When notice of demand may issue.

**152.** A notice of demand may be issued on or after the day following that on which the arrear accrues.

The Commissioner may from time to time frame rules for the issue of such notices, and with the sanction of the Governor in Council shall fix the costs recoverable from the defaulter as an arrear of revenue, and direct by what officer such notices shall be issued.

### SUMMARY (S. 152.)

Notice—(I) Form of ... .. N1

- (2) Indiscriminate issue of—to  
     be avoided ...N 3, G 1, 2, 3, 4, 6  
 (3) Rules for cost and issue of.. G 5  
 (4) —Under Income Tax Act.. N 4  
 (5) When—issue first... ...N 2, G 9
- Notice fee—(1) Remission of ...G 5 (4), 10  
 (2) When levy of—becomes  
     due ... .. G 7, 8
- Rules under S. 158 ... .. G 5  
 Rules under S. 183 ... .. G 5

*N. 1.* The form of notice is in Appendix H. to the rules under the Code.

*N. 2.* A notice of demand shall be issued first by a Mamlatdar, Mahalkari or Head Karkun in accordance with the 2nd paragraph of this Section and Rule I. at G. 5 issued by the Commissioners under that paragraph.

*N. 3.* Rule 88 referred to in G. 6 is as follows :—  
 “Village officers to be held responsible for avoiding frequent issues of such notices.—The village officers shall be held responsible by the Collector for warning landholders verbally from time to time of the dates on which their instalments are due and for using their personal influence in securing prompt payment without resort to notices of demand or other compulsory process, and exemplary punishment should be awarded to any village officer who is remiss in the performance of this duty.”

*N. 4.* Notice of demand under the Income Tax Act 7 of 1918:—A notice of demand under Section 20 of Act 7 of 1918 is only an intimation in form E and the work of recovery commences when any of the steps referred to in Section 150 of the Land Revenue Code is first taken after the amount of Income Tax becomes an *arrear* under Section 35 of Act 7 of 1918.

Any officer above the rank of a Mamlatdar is not bound to issue a notice first under S. 152 of the Land Revenue Code in recovering an arrear of Income Tax as an arrear of Land Revenue.

As the powers of a Collector under Section 36 (1) of the Income Tax Act are not delegated to a Mamlatdar (*Vide* G. N. No. 9400, dated 18th September 1918) the latter, when beginning to recover an arrear of Income Tax, is bound to issue a notice under S. 152 L. R. C. in the first instance (*Vide* N. 2 above.)

*G. 1.* Issue of notices.—Indiscriminate issue of notices, which is apt to be considered a great proof of difficulty in collecting the revenue, should be avoided as much as possible: (G. R. No. 3813, dated 15th June 1877.)

*G. 2.* The Commissioner should impress on the Collector that notices for the recovery of Government demand must only be issued with proper precautions to prevent any abuse of the system and that Talatis needlessly harassing the rayats render themselves liable to punishment. (G. R. No. 4432, dated 23rd August 1879.)

*G. 3.* The Commissioners should issue strict instructions warning the Talatis and Kulkarnis that if in any instance it is found that notices for the realization of Government demands have been unnecessarily or indiscriminately issued, the Talatis or Kulkarnis concerned will be very severely punished. (G. R. No. 4921, dated 26th August 1881.)

*G. 4.* When a cultivator fails to pay his assessment punctually owing to real poverty, it is clearly inexpedient to add notice-fees to his other liabilities, as long as it can be avoided. (G. R. No. 6551, dated 3rd November 1881.)

*G. 5.* In supersession of all previous orders and rules on the same subjects, the Commissioner in Sind and the Commissioners, N.D., C. D. and S.D., have with the sanction of the Governor in Council

framed the following rules under Sections 152, 158 and 183 of the Bombay Land Revenue Code, 1879:—

*I.—Notices of Demand (Section 152.)*

1. Notices of demand shall be issued by the Mamlatdar or Mahalkari within whose charge an arrear accrues or by their Head Karkuns.

2. Such notices shall not usually be issued until ten days after the arrear has accrued.

3. The costs of issuing notices of demand shall be leviable in the shape of a fixed fee of four annas for each notice, if the amount of the arrear does not exceed rupees five, and of eight annas in any other case.

4. The Collector, or the Assistant, or Deputy Collector in charge of a taluka may, at his discretion, remit the fee in any case if it shall appear to him that its levy will occasion undue hardship. The Mamlatdar or Mahalkari may remit the fee in any case in which it is charged by mistake.

“5. Notwithstanding anything contained in the foregoing rules, in the talukas of Karwar, Ankola and Honavar and the Petha of Bhatkal in the Kanara District where an order has been passed under Section 87 for payment of rent or land revenue and such rent or land revenue is not paid within 10 days from the date of passing such order, a notice shall issue as prescribed in rule I and a notice-fee of half an anna in the rupee shall be levied on the amount recovered in pursuance of such notice.”

Special rules  
for certain  
parts of  
Kanara  
District.

Provided that this rule shall not apply to assistance suits by Inamdars to recover survey assessment in alienated villages of the aforesaid talukas and petha in which a survey settlement has been introduced and survey assessments are collected by hereditary village officers.”

*II.—Arrest and imprisonment of Defaulters (Section 158).*

1. The powers of arrest conferred by Section 157 may be exercised by Collectors and by any Assist-

ant or Deputy Collector in charge of talukas specially empowered by the Collector in this behalf and by subordinate officers acting in each case under the express authority of a Collector or of any such Assistant or Deputy Collector.

2. The costs of arrest shall be according to the following scale ;—

					Rs. a.
If the amount for the recovery of which the arrest is made,	{	does not exceed Rs. 25	...	...	0 4
		exceeds Rs. 25 but does not exceed Rs. 100	...	...	0 8
		" 100	"	"	500...1 0
		" 500	"	"	1,000...2 0
		" 1,000	"	"	5,000...4 0
		" 5,000	...	...	...

3. The subsistence-money to be paid by Government to any defaulter under detention or imprisonment shall be fixed by the Collector, or by the Assistant or Deputy Collector, who orders the arrest within the following limits, *viz* :—

	Not less than	Not more than
	Rs. a.	Rs. a.
If the defaulter is a European	... 1 0	1 8
If the defaulter is a Eurasian or a native of Portuguese descent	... 0 8	1 0
In any other case	... 0 3	0 12

### III.—Expenses of Sale (Section 183.)

1. The expenses of a sale shall be taken to be two annas in the case of moveable property and four annas in the case of immoveable property or in either case  $\frac{1}{4}$ th of the amount, if any, realized by the sale whichever is the greater.

Fractions of a rupee are to be neglected in calculating expenses. G. N. No. 2459, dated 26th March 1883, G. N. No. 8714, dated 16th September 1911, G. N. No. 9263, dated 3rd October 1911.

G. 6. The coercive system of realizing Government demands requires more organized supervision than is at present given to it, and Government are convinced that if village officers were compelled to carry out strictly their duties under No. 87 (now 88) of the rules under the Land Revenue Code, notices

*Page 474 of the Land Revenue Code.*

*For rule III—Expenses of sale, substitute the following :—*

*“ Central Division and Southern Division.*

In the case of immoveable property the expenses of a sale shall be taken to be eight annas or  $1/32$ nd of the amount, if any, realised by the sale whichever is greater.

2. (i) In the case of moveable property the expenses of a sale shall be taken to be the actual cost of removal, maintenance, guarding and custody of the property together with such other incidental expenses as may be necessary for the purposes of the sale.

(ii) The amount to be recovered, in each case shall be calculated in the following manner, either by the officer conducting the sale or by the Prant Officer as the Collector may direct :—

(a) for the pay and travelling allowance of officers and men engaged exclusively on the work of attachment and sale and the running cost of a motor car or other vehicle used for transport of the staff or of the attached property ;

(b) for the removal of the live-stock or property to the place where it is to be kept in custody for seven days, its maintenance, guarding and custody till arrival thereat ;

(c) for the maintenance, guarding and custody of the property at the place where it is to be kept in custody for seven days ;

(d) for the maintenance, guarding and custody of the property at the place where it was attached or elsewhere ;

(e) for the maintenance, guarding and custody of the live-stock or property during removal to the place where it is sold and for such removal.

The above rules shall also apply to sales which have not been completed owing to the arrears due having been paid on or before the date fixed for the sale.

The amount to be recovered on account of the cost of special staff engaged on the work of recovering co-operative societies' dues shall not exceed five per cent. of the dues recovered.

*Northern Division.*

1. In the case of immoveable property the expenses of a sale shall be taken to be eight annas or  $1/32$ nd of the amount, if any, realized by the sale whichever is the greater.

2. In the case of moveable property the expenses of a sale shall be taken to be the actual cost of removal, maintenance, guarding and custody of the property together with such other incidental expenses as may be necessary for the purposes of the sale.

The amount to be recovered in each case should be fixed as stated below either by the Officer conducting the sale or the Prant Officer as the Collector may direct :—

- (a) for the pay and travelling allowance of officers and men engaged exclusively on the work of attachment and sale and the running cost of a motor or other vehicle used for transport of the staff or of the attached property ;
- (b) for the removal of the live-stock or property to the place in which it is to be kept in custody for seven days, its maintenance, guarding and custody till arrival thereat ;
- (c) for the maintenance, guarding and custody of the property at the place in which it is to be kept in custody for seven days ;
- (d) for the maintenance, guarding and custody of the property at the place at which it was attached or elsewhere ;
- (e) for the maintenance, guarding and custody of the live-stock or property during removal to the place where it is sold and for such removal.

3. The amount to be recovered on account of the cost of special staff engaged on the work of recovering co-operative societies' dues shall not exceed five per cent. of the dues recovered."

and coercive process would become practically known. The attention of all district officers is again invited to this most important subject. (G. R. No. 7175, dated 2nd October 1893.)

G. 7. Levy of notice fees.—The practice of charging fees only when the notices are actually served is not in accordance with the rules and no collusion between Kulkarnis and occupants can continue if the officer in charge of the taluka and the Mamlatdar take measures to ensure the prompt service of the notices. (G. R. No. 954, dated 31st January 1896.)

G. 8. The levy of fees for all notices issued, whether they are actually served or not, should be the practice. The rule under which remission may be granted makes sufficient provision for the avoidance of undue hardship. A notice should be held to be issued when it has been signed and dated. (G. R. No. 1194, dated 16th February 1898.)

G. 9. Notices necessary before distraint.—The suggestion, to dispense with notice under Section 152 and to issue a declaration of forfeiture under Section 153 in all cases in which a notice is necessary does not commend itself to Government. It would be an extreme measure to issue a threat of forfeiture in every instance in which the occupant delays payment of assessment for a few days. (G. R. No. 10724, dated 31st October 1907.)

G. 10. Head Karkuns should also sign notices of demand and remit notice fees wrongly charged (G. R. No. 5295, dated 1st June 1911 item 72 and 73.)

[<sup>a</sup>] **153.** The Collector may declare the occupancy [<sup>b</sup>] or alienated holding in respect of which an arrear of land revenue is due, to be forfeited to Government, and sell or otherwise dispose of the same under the provisions of sections 56 and 57, and credit the proceeds, if any, to the defaulter's accounts.

The occupancy or alienated holding for which arrear is due may be forfeited



[c] Provided that the Collector shall not declare any such occupancy or alienated holding to be forfeited—

- (a) unless previously thereto he shall have issued a proclamation and written notices of the intended declaration in the manner prescribed by sections 165 and 166 for sales of immoveable property, and
- (b) until after the expiration of at least fifteen days from the latest date on which any of the said notices shall have been affixed as required by section 166.

[a] As to the local repeal of section 153, see para. 4 of foot-note [a] on page I, *supra*.

[b] As to the local modification of the word "occupancy," see para. 5 of foot-note [a] on p. I, *supra*.

[c] This proviso was added by Bom. VI of 1901, s. 16.

### SUMMARY (s. 153)

Section 153, (1) Interpretation of	...	G	5
(2) Proviso to	... ..	N	2
(3) to be read with other orders	... ..	N	1
Forfeiture—(1) Collector to know extent of	... ..	G	2
(2) form of notice of	... ..	N	3
(3) Mamlatdars and Mahalkaris can issue notice of	...	G	4
(4) minors should not suffer by	...	N	4
(5) Sale of land without	...	J	2
(6) Talukdari village	...	J	1
(7) Watan land	... ..	G	1
(8) When—absolute	... ..	G	3

N. I. Vide G. R. No. 3796, dated 21st July 1880, printed under Section 56 and also orders under

Sections 169 and 185; also G. Rs. Nos. 2072, dated 16th March 1897 and 4567, dated 30th June 1899, printed under Section 150; so also P. J. 70 of 1895 printed under Section 172.

*N. 2.* This proviso to Section 153 was added by Bombay Act VI. of 1901, Section 16, in order to provide against the possibility of an occupancy or alienated holding being declared forfeited and disposed of without the fact coming to the knowledge of persons who might otherwise avail themselves of the remedies against forfeiture contained in Sections 80 and 81 (para 6 [2] of Select Committee's Report on Bill No. IV of 1901. B. G. G. Pt. V., p. 250.)

*N. 3.* *Vide* Appendix 25 form of notice.

*N. 4.* Care should be taken that minors do not suffer by forfeiture for default made by their guardians.

*G. I. Watan land, forfeiture of.*—Watan land is "alienated land" within the meaning of clause 19, Section 3, of the Code, and when an arrear of land-revenue is due in respect of any such alienated holding, the Collector may under this section declare it to be forfeited to Government. The Collector, when he has forfeited any such alienated holding should not sell it but should enter the land comprised therein in his records as unoccupied unalienated land and deal with it according to the law and rules relating to such land. The arrear of Judi will still be recoverable from the Watandars under Chapter XI. (G. R. No. 3016, dated 10th June 1880). The above orders are made applicable to all alienated lands by G. R. No. 3796, dated 21st July 1880. In every case of default of payment of arrears of land revenue the holding should be forfeited.

*G. 2. Necessity of the Collector's knowing severe measures adopted.*—It is the plain duty of Collectors to keep themselves fully informed of the extent to which recourse is being had to the severe

forms of compulsory process for the collection of revenue and where they have been largely employed, of the special reasons which have qualified or necessitated their employment. (G. R. No. 5603, dated 8th August, 1901.)

G. 3. Forfeiture once lawfully made is absolute and there is no legal obligation on the Collector to cancel it even though the arrears be afterwards paid. (G. R. No. 7855 dated 31st August 1910.)

G. 4. Mamlatdars and Mahalkaris can issue notices under this section. (G. R. No. 5295 dated 1st June 1911, item 74.)

G. 5. Interpretation of section 153 of the L. R. Code.

1. A case has come to the notice of Government in which, for default in payment of land revenue in respect of thirteen survey numbers held by a person in whose name they were shown in the record of rights, the Mamlatdar issued a notice under s. 153 of the land Revenue Code calling on him to pay with fifteen days the land revenue and the local fund cess due on all the survey numbers, and intimating that in default of payment the lands mentioned in the notice would be forfeited. Although the arrears of land revenue were on account of thirteen survey numbers, only four survey numbers were mentioned in the Mamlatdar's notice, as the Mamlatdar considered that these would be sufficient to provide the arrears of revenue, if sold. The land revenue in respect of these four survey numbers was paid in time; but as the balance in respect of the remaining nine survey numbers remained unpaid, the Assistant Collector, on the Mamlatdar's recommendation, forfeited the four survey numbers in question. On application being made to him, the Assistant Collector refused to cancel his order of forfeiture, which was confirmed, on appeal, by the Collector and the Commissioner concerned. The applicant thereupon filed a suit against the Secretary of State for India

in Council. For the reasons stated below, Government compromised the suit and restored to the plaintiff the lands in dispute.

2. Under the survey settlement system in force in this Presidency, land revenue assessment is fixed separately on each survey number and not collectively on all the survey numbers held by the occupant. As therefore the plaintiff in the present case had paid in time the land revenue in respect of the four survey numbers mentioned in the notice, those survey numbers were not the lands on account of which land revenue was in arrear, and they were therefore not liable to forfeiture under section 153 of the Land Revenue Code. Apart from this point it appeared that all the formalities regarding the issue of proclamation and publication of notices as required by the proviso to section 153 of the Land Revenue Code, read with sections 165 and 166, has not been fully observed; and failure to comply with the required formalities had vitiated the forfeiture proceedings.

3. The position in such cases briefly stated is that where the assessment or part of it, on a survey number is in arrear, the arrear may be recovered under s. 150 (b) of the Land Revenue Code by forfeiture of that survey number, because, as a specific assessment was fixed on it, that survey number is the occupancy (section 3, 17) in respect of which the arrear is due. The special feature of forfeiture is that it frees the occupancy from encumbrances (section 56). The Collector can sell other immoveable property belonging to the defaulter; for instance, other survey numbers entered in his name, but cannot forfeit such other property and the property is sold subject to encumbrances.

4. In cases therefore in which the assessment is due on several survey numbers, the whole of these numbers should be entered in the notice as to be

forfeited in default of payment, and the discretion allowed under rule 62 of the rules under section 214, Land Revenue Code, should be exercised at the time when the final order is being passed. It should also be borne in mind that where a statute confers a right or power, with a direction that certain regulations or formalities shall be complied with, their non-observance would invalidate the whole proceedings. Section 153 of the Land Revenue Code makes the observance of the formalities therein mentioned imperative and leaves no option or discretion to the revenue authorities. Under the last clause of section 166, the Collector may cause the notice to be published in any other manner, i.e. in addition to the ways prescribed, but not in lieu of them.

5. Mistakes in the use of section 153 of the Land Revenue Code are not infrequent, and the Governor in Council considers it desirable to draw the attention of the officers concerned to its proper use on the lines indicated above. (G. R. R. D. No. 11876 dated 3rd October 1917.)

*J. 1.* Talukdari villages fall within the description of "alienated holding" as defined by the Code. When a talukdari village is attached under Section 159 of the Code for arrears of land revenue, so long as the attachment subsists, an order of forfeiture under Section 153 is "illegal" (I. L. R. XVI, Bombay, 455, Samaldas Bechar Desai *vs.* Secretary of State for India.)

*J. 2.* Sale not illegal for want of forfeiture:—A sale duly confirmed by a Collector, of a holding, for default of payment of assessment, is not invalid and illegal because there is not on record a declaration of forfeiture by the Collector prior to the sale. (Ganapati *vs.* Ganqaram—P. J. page 539—1895.) I. L. R. 21 Bombay 381.

**154.** The Collector may also cause de-  
 faulters's moveable property to be distrained and  
 sold.

Distrain and  
 sale of de-  
 faulters's  
 moveable  
 property.

Such distrains shall be made by such officers  
 or class of officers as the Commissioner under  
 the orders of Government may from time to time  
 direct.

By whom  
 to be made.

### SUMMARY (s. 154)

Section 154—to be read with a Govern-

ment order ... N 1

Cattle ... J 3

Distrain—(1) account books for income-  
 tax purposes cannot be

distrained ... J 2

(2) dwelling houses not to be

broken into for ... G 6

(3) form of warrant ... G 5

(4) goods on a public road ... J 1

(5) powers of (1) executing

order for ... G 2,3

(2) ordering to Mamlat-

dars and Mahalkaris ... G 9

(6) Talukdari village ... J 2

Forfeiture—when—should not be made G 1,4,7,8

*N. I. Vide G. R., No. 8932, dated 23rd December 1901, under  
 Section 150.*

**G. I. Eviction for non-payment not to be  
 enforced in certain cases.**—It is not the wish of  
 Government that all holdings in respect of which  
 arrears of land revenue may be due should *ipso facto*  
 be declared forfeited, but that the provisions  
 relating to forfeiture should only be held to apply  
 to cases in which the Collector deems it necessary  
 to resort to process for the recovery of such arrears.  
 Where there is reason to think that if the people  
 have time given them they will not fail to discharge

their liabilities, it would be harsh to treat them as contumacious defaulters, or as hopelessly insolvent, and it is not the wish of Government that the power of forfeiture should be enforced in such cases to their disadvantage and the risk of the outstanding revenue. (G. R. No. 4949, dated 18th September 1880.)

**G. 2. Distraint may be executed by—Tappeddar or Munshi.**—Distraints under Section 154 of the Code may be made in Sind by any Tappeddar or Munshi provided that he can read and write. (G. R. No. 3396, dated 13th June 1881.)

**G. 3. Taluka Karkuns, Kulkarnis, Talatis and Patels.**—Distraints under Section 154 of the Land Revenue Code should be executed by Taluka Karkuns, Kulkarnis, Talatis and Patels provided that they should be executed only by persons able to read and write. In special cases, however, the Collectors and their assistants may direct the warrant to any person whom they may consider competent to execute it. (G. R. No. 7858, dated 23rd December 1881.)

**G. 4. Circumstances in which there should be no forfeiture:**—Forfeiture of the right of occupancy though authorized as a penalty for non-payment of revenue, is not absolutely required in any case, and Government do not desire the penalty to be enforced when the failure to pay is clearly due to inability resulting from loss of crops or other calamity. (G. R. No. 7726, dated 17th October 1883.)

**G. 5. Form of warrant of distraint.**—The Code does not require any standard form of warrant for distraint, nor is such a form necessary or expedient, for use by revenue officers.

The order of distraint may take the form of an ordinary order in the course of correspondence. (G. R. No. 9401, dated 21st December 1883, and G. R. No. 1302, dated 15th February 1889.)

G. 6. Dwelling houses not to be broken into— Dwelling houses are not to be broken into for the purpose of distraining goods for the recovery of arrears of land-revenue. (G. R. No. 9982, dated 19th December 1884, and G. R. 11240 of 11th December 1913.)

G. 7. It is harsh and impolitic to evict an occupant who has fallen into arrears by no fault of his own but under the inevitable stress of famine as such eviction is attended by the loss of any improvements he may have made in his holding. (G. R. No. 8757, dated 6th November 1884). The views of Government on this point which were set forth in their circular letter to the Commissioners, No. 4454, dated 25th August 1879, have been repeated in Sections 137 to 142 of the Famine Relief Code of 1900. Section 141 of this Code which directly bears on this point is given below:—

“(a) In no case should the Collector apply such pressure to obtain payment as will cause an occupant to sell his plough, cattle or agricultural implements, or prevent or retard the resumption of agriculture. (b) The recovery of arrears, if any, should be from a surplus of means after sufficient is allowed for the subsistence of the occupant and his family and the restoration of his position as a payer of revenue, and occupants should not be driven to borrow from *Savkars* in order to pay arrears.”

(b) The sale of the occupancy right of old cultivators to recover arrears accumulated under stress of famine is contrary to the policy of Government. (G. R. No. 651, dated 23rd January 1885).

G. 8. It serves no good purpose to keep men without capital as occupants where there are capitalists to take their place, but occupants must not be deprived of their land without good cause, and it must not be forfeited if the revenue can be recovered by other means. (G. R. No. 8191, dated 9th October 1885.)



**G. 9. Delegation to Mamlatdars and Mahalkaris of the power to distrain.**—The Collectors may delegate the powers exercised by them under Section 154 of the Land Revenue Code, to Mamlatdars and Mahalkaris. (G. R. No. 5954, dated 31st August 1891), also R. 5295 of 1-6-11.

**J. 1. Attachment of goods on a public road.**—The defendant who was a Mamlatdar of Khanapur, in the Satara District, attached some pieces of jaggery which were being taken in five carts on a public road by the plaintiff's son from the fields of D, who owed arrears of land revenue to Government and had to satisfy two decrees in assistance cases. The defendant was not invested, by the Collector of Satara District, with the powers contained in section 140 of the Land Revenue Code. The plaintiff filed a suit against the defendant to recover damages for wrongful attachment. The Lower Court dismissed the suit on the grounds that it was barred by s. 4 (c) of the Revenue Jurisdiction Act; and that as the defendant acted bona fide and was authorised under s. 154 of the Land Revenue Code to distrain the property the suit was barred by s. 6 of the Revenue Jurisdiction Act. On appeal:—

Held, (1) that s. 4 (c) of the Revenue Jurisdiction Act was not a bar to the suit, in which there was a claim arising out of the alleged illegality of the proceedings taken for the realisation of land revenue. The proceedings mentioned in s. 4 (c) of the Revenue Jurisdiction Act must be in their inception legal.

(2) That the defendant was not entitled to claim protection under s. 6 of the Revenue Jurisdiction Act which required that the Act complained of should have been done bona fide in pursuance of the provisions of any law, as he was not invested by the Collector of the District with powers contained in s. 140 etc. of the Land Revenue Code and it was not proved that he believed the property

distrainted to be that of defaulter, as required under s. 154 of the Land Revenue Code. The powers contained in ss. 140 etc. of the Land Revenue Code do not authorise the detention of anything but the crops of the land or the seizure of the crop or any other goods after removal from the lands.

Gangaram Hatiram v. Dinkar Ganesh Patwardhan  
15 Bombay Law Reporter 665.

*J. 2.* Owing to the minority of a Talukdar the revenue administration of his village was entrusted to the Talukdari Settlement Officer and under him to the Mamlatdar of Prantij, under a guardianship order passed by the District Court. To recover the arrears of assessment for past years from one of the Khatedars of the village, the Mamlatdar attached ornaments belonging to the Khatedar (plaintiff). The plaintiff having sued the Mamlatdar to recover damages for the wrongful attachment:—

Held, that the Mamlatdar was authorised to distrain moveable property of the plaintiff, both under section 154 of the Land Revenue Code, because he was invested with power of making attachment of moveables by delegation from the Collector of Ahmedabad and under sec. III of the Land Revenue Code, as modified by s. 33 of the Gujarat Talukdari Act.

To ascertain the liability of the plaintiff to pay income-tax, a mamlatdar removed the account-books belonging to the plaintiff from his house, against his wish and in spite of his protests. The plaintiff having sued to recover damages for the wrongful seizure of his account-books by the Mamlatdar:—

Held, that the seizure having been unauthorised and wrongful, the Mamlatdar was liable in damages.

18 Bombay Law Reporter 323.

*J. 3.* Cattle owners removing cattle attached without actual seizure under section 154.

Accused Nos. 2 and 3, having made a default in the payment of Land Revenue, the Mamlatdar proceeded to their house and made a *panchnama* declaring their buffaloes to be under attachment. At the instigation of accused No. 1, the other accused untied and removed the buffaloes. The trying Magistrate convicted the accused of the offence of theft. The sessions Judge referred the case to the High Court being of opinion that the removal of the buffaloes did not amount to theft because the buffaloes were not at the time in the possession of the mamlatdar, who had not actually effected the attachment by laying hands on the animals or some fastening thereof :—

*Held*, that the accused were rightly convicted of the offence of theft, for the Mamlatdar was to be deemed to be in possession inasmuch as he had a statutory right to take possession, he came to the place where the buffaloes were with the intention of taking possession, he made a declaration and *Panchnama* that he had taken possession, and he exercised the right of possession by forbidding the defaulters from removing them.

(21 Bombay Law Reporter, pages 251-255).

Sale of  
defaulter's  
immoveable  
property.

**155.** The Collector may also cause to right, title, and interest of the defaulter in any immoveable property other than the land or which the arrear is due to be sold.

*N. 1.* *Vide* G. R. No. 4567, dated 30th June 1899; under Section 150.

*N. 2.* The sale under section 155 is like the one held by a Civil Court in execution of its decree, and if the land is not sold owing to want of bidders it is only kept under attachment but it cannot be kept waste nor can the occupant be evicted.

## Correction Slip No. 148.

*For Note No. 2 on page 486 of Joglekar's Land Revenue Code substitute the following :--*

“The Land Revenue Code does not contain any provision under which any immovable property of a defaulter in respect of which land revenue is not due, but which is liable to be sold under section 155, can be attached. If the land is not sold owing to want of bidders all that Government can do is to buy in the right, title and interest of the occupant or leave the land at the disposal of the occupant.”

(Government Resolution No. 5679/28 dated 29th September 1930.)

[Price—Pies 6 or 1d.]

*Section 155—**Insert G. 2 :—*

“ The immoveable property of a defaulter which is put up for sale under the Land Revenue Code is not attached in execution and cannot therefore be transferred to a Co-operative Society for the recovery of its dues under section 59 (2) of the Bombay Co-operative Societies Act, 1925. A Co-operative Society should in such cases offer an adequate bid and purchase the right, title and interest of the defaulter in the property. In special cases, however, in order to set an example, the Collector may in the absence of outside bidders transfer the right, title and interest of the defaulter in immoveable property to a co-operative society on a purely nominal bid. ”

(G.Rs. No. 4373/28, dated 23-4-1930, 8-12-1930 and 13-2-1932.)

*G. 1.* Difference of the effect of Sections 155 and 153.—In the case of a sale under Section 155 encumbrances created by the occupant remain whereas they disappear in the case of forfeiture under Sections 153 and 56. (G. R. No. 6391, dated 9th September 1890.)

**156.** All such property as is by the Civil Procedure Code exempted from attachment or sale in execution of a decree, shall also be exempt from distraint or sale, under either of the last two preceding sections.

v of 1908.  
Exemption  
from dis-  
traint and  
sale.

The Collector's decision as to what property is so entitled to exemption, shall be conclusive.

*N. 1.* *Vide* G. R. No. 4347, dated 26th June 1902, printed under Section 42.

*N. 2.* The proviso to Section 60 (1) of the Civil Procedure Code (Act V of 1908) exempts the following articles from attachment or sale :—

- (a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman ;
- (b) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following Section (*re.* special exemption by Government orders) ;
- (c) houses and other buildings (with the materials and the sites thereof and the land

immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him;

- (d) books of account ;
- (e) a mere right to sue for damages ;
- (f) any right of personal service ;
- (g) stipends and gratuities allowed to pensioners of the Government, or payable out of any service family pension fund notified in the Gazette of India by the Governor General in Council in this behalf, and political pensions ;
- (h) allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty ;
- (i) the salary of allowances equal to salary of any such public officer or servant as is referred to in clause (h), while on duty, to the extent of—
  - (i) the whole of the salary, where the salary does not exceed twenty rupees monthly ;
  - (ii) twenty rupees monthly, where the salary exceeds twenty rupees and does not exceed forty rupees monthly ; and
  - (iii) one moiety of the salary in any other case ;
- (j) the pay and allowances of persons to whom the Indian Articles of war ( V of 1869 ) apply ;
- (k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act ( IX of 1897 ), for the time being applies in so far as they are declared by the said Act not to be liable to attachment ;
- (l) the wages of labourers and domestic servants whether payable in money or in kind ;

## No. 70

*Section 156—*

*Insert the following as “N. 3” after “N. 2” at page 489 of the Code :—*

*“No kind of agricultural produce has been exempted from attachment under section 61 of the Civil Procedure Code.”*



- (m) an expectancy of succession by survivorship or other merely contingent or possible right or interest ;
- (n) a right to future maintenance ;
- (o) any allowance declared by any law passed under the Indian Councils Acts, 1861 and 1892, to be exempt from liability to attachment or sale in execution of a decree ; and
- (p) where the judgment debtor is a person liable for the payment of land-revenue, any moveable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

*Explanation.*—The particulars mentioned in clauses (g), (h), (i), (j), (l) and (o) are exempt from attachment or sale whether before or after they are actually payable.

(2) Nothing in this Section shall be deemed—

- (a) to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building site or land, or
- (b) to affect the provisions of the Army Act or of any similar law for the time being in force.

**G. I. Of materials of houses belonging to an agriculturist.**—The materials of a house or other building belonging to an agriculturist are exempted from distraint and sale under Section 156 of the Bombay Land Revenue Code, as (except in the one case, which can never arise under the Bombay Land Revenue Code, of a decree for rent) they would be under Section 266 (now section 60) of the Civil Procedure Code. (G. R. No. 2179, dated 26th March 1891.)

**J. I. Exemption from distraint—Of houses dwelt in by agriculturist.**—The expression “mate-

rials of houses and other buildings belonging to, occupied by, agriculturist," used in Section 266, (now section 60) clause (c) of the Code of Civil Procedure, is intended to exempt, from attachment and sale, the house dwelt in by an agriculturist as such, and the farm buildings appended to such dwelling.

The exemption does not extend to other houses not in the physical occupation of an agriculturist owner, as a dwelling appropriate or convenient for his calling. The exemption extends, after the death of an agriculturist debtor, to his representative who occupies the house in good faith as an agriculturist, and who does not take it up merely with the view of defrauding his creditor. (*Radhakisam Hakumji vs. Balvant Ramji*—I. L. R. VII. 1883, Bombay 530 and XII, Bombay 366).

Arrest and  
detention of  
defaulter.

**157.** At any time after an arrear becomes due, the defaulter may be arrested and detained in custody for ten days in the office of the Collector or of a *Mámlatdár* or *Mahálkari*, unless the revenue due together with the penalty or interest and the costs of arrest and of notice of demand, if any, have issued and the cost of his subsistence during detention, is sooner paid.

Imprison-  
ment in  
Civil Jail.

If, on the expiry of ten days, the amount due by the defaulter is not paid, then, or if the Collector deem fit on any earlier day, he may be sent by the Collector with a warrant, in the form of Schedule C, for imprisonment in the civil jail of the district:

Defaulters  
not to be  
detained in  
custody  
longer than  
debtors may  
be detained by  
the Civil  
Court,

Provided that no defaulter shall be detained in imprisonment for a longer period than the time limited by law in the case of the execution of a decree of a Civil Court for a debt equal in amount to the arrear of revenue due by such defaulter.

*Section 157—**Insert G. 2 :—*

“An agriculturist debtor against whom action is being taken under section 59 (1) (b) of the Co-operative Societies Act may be arrested and detained under section 157, Land Revenue Code. He cannot claim protection under section 21 of the Deccan Agriculturists' Relief Act.”

(G.R. No. 8281/28, dated 18-1-1932.)

*N. I.* Section 58 (1) of Act V of 1908, Civil Procedure Code, lays down that persons detained in the civil prison in execution of a decree shall be so detained (a) for six months where the decree is for the payment of a sum of money exceeding fifty rupees, (b) in any other case for a period of six weeks.

*N. 2.* By way of explaining this section the following questions and answers are given:—

- |                                                                                                                                                                                             |   |      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|------|
| (1) Do six weeks or six months according to arrear of revenue referred to in sections 157 L. R. C. and 58 (1) of Civil Procedure Code include the first ten days of the Collector's arrest? | } | Yes. |
| (2) Under the rules, subsistence money from 3 to 12 annas is to be given. So should the Mamlatdar spend for each prisoner any amount within these limits?                                   | } | Yes. |
| (3) Are arrears, Notice fee, $\frac{1}{2}$ fine under s. 148, costs of arrest and subsistence money to be recovered?                                                                        | } | Yes. |

*G. I.* Special delegation of power of arrest to Assistant or Deputy Collector.—The power of arrest should be exercised by the Collector or the Assistant or Deputy Collector in charge of a Taluka to whom the power has been specially delegated by the Collector, it being remembered that Government are not in favour of arrest of defaulters except in extreme cases. (G. R. No. 1743, dated 1st March 1883.)

**158.** The Commissioner may, with the sanction of the Governor in Council, from time to time, declare by what officers, or class of

Power of  
arrest by  
whom to be  
exercised.

officers, the powers of arrest conferred by section 157 may be exercised, and also fix the costs of arrest and the amount of subsistence-money to be paid by Government to any defaulter under detention or imprisonment.

*N. I.* See part II regarding "arrest etc." of G. 5. under section 152.

Power to attach defaulter's village, and take it under management.

**159.** If the holding, in respect of which an arrear is due, consists of an entire village, or of a share of a village, and the adoption of any of the other processes before specified is deemed inexpedient, the Collector may, with the previous sanction of the Commissioner, cause such village or share of a village to be attached and taken under the management of himself or any agent whom he appoints for that purpose.

*N. I.* Vide G. 1. under section 144.

*N. 2.* Under the orders in G. R. No, 9920 dated 21st December 1904, (vide G. 60 under sections 86&87), quit rents due to Government in an Inam Village are to be recovered direct from tenants or subsharers. In view of this G. R. there seems no necessity to attach the village.

*G. I.* A village was placed under attachment on account of revenue due in respect of it. The Government Revenue having been realized, the attachment was raised; but the expenses incidental to the realization having remained to be recovered, the sanction of Government was asked to replace the village under attachment under Section 159 of the Land Revenue Code for the recovery of the expenses. It was held that no reference to Government was necessary and that the Commissioner was empowered to pass the order applied for under the section referred to. (G. R. No. 6578, dated 13th December 1880.)

[<sup>a</sup>] **160.** The lands of any village or share <sup>Lands of such village to revert free of incumbrances.</sup> of a village so attached shall revert to Govern-<sup>ment</sup> unaffected by the acts of the superior holder or of any of the sharers, or by any charges or liabilities subsisting against such lands, or against such superior holder or sharers as are\* interested therein, so far as the public revenue is concerned, but without prejudice in other respects to the rights of individuals; and the Collector or the agent so appointed shall be <sup>Powers of manager.</sup> entitled to manage the lands attached, and to receive all rents and profits accruing therefrom to the exclusion of the superior holder or any of the sharers thereof, until the Collector restores the said superior holder to the management thereof.

\* The word "are" in section 160 has apparently been omitted by mistake in the authentic copy of the Code.

[a] As to the local modification of section 160, see para. 5 of foot-note [a] on p. I, *supra*.

*N. I.* *Vide* Section 29 of Act VI of 1888 (Talukdari Act).

*J. I.* The Collector cannot demand more (Local Fund) in addition to the stipulated rent.—The plaintiffs were the tenants of the Thakor of G. The Collector undertook the management of his estate and had under Section 144 attached the village G. *Held*, that the plaintiffs as tenants of The Thakor were liable to pay to the Collector the stipulated rent only and that Section 160 did not entitle him to demand more. (Printed Judgments 323, the Collector of Ahmedabad *v.* Mosan, '92).

**161.** All surplus profits of the lands <sup>Application of surplus profits.</sup> attached, beyond the cost of such attachment and management, including the payment of the current revenue, and the cost of the introduction

of a revenue survey, if the same be introduced under the provisions of section 111 [a] shall be applied in defraying the said arrear.

[a] Words repealed by Bom. III of 1886 are omitted.

Restora-  
tion of  
village so  
attached.

[a] **162.** The village or share of a village so attached shall be released from attachment, and the management thereof shall be restored to the superior holder on the said superior holder's making an application to the Collector for that purpose at any time within twelve years from the first of August next after the attachment:

if at the time that such application is made it shall appear that the arrear has been liquidated;

or if the said superior holder shall be willing to pay the balance, if any, still due by him, and shall do so within such period as the Collector may prescribe in that behalf.

Disposal  
of surplus  
receipts.

The Collector shall make over to the superior holder the surplus receipts, if any, which have accrued in the year in which his application for restoration of the village or share of a village is made after defraying all arrears and costs; but such surplus receipts, if any, of previous years shall be at the disposal of Government.

[a] As to the local modification of section 162 see paras. 4 and 5 of foot-note [a] on p. I, *supra*.

**G. I. Payment of surplus receipts.**—The following questions and answers to them are given for the guidance of revenue officers:—

(1) Whether the payment of surplus receipts can be ordered from the year 1910-11 as requested by the 2 Inamdars, as one of them applied in that year, or whether they are entitled to the surplus of 1911-12 in which year both of them applied. It is equitable to repay the surplus from the year 1910-11.

(2) Whether the surplus is to be paid only to the two Khatedars on their joint receipts or to the two Khatedars and their sub-sharers according to their shares in the village.

The last paragraph of sec. 162 of the Bombay Land Revenue Code, about the disposal of surplus receipts, is subject to the provisions of the Code of Civil Procedure, 1908. In the execution of a decree the Civil Court is empowered to attach money in the hands of a Collector that may be due to a sub-sharer, even though that money is payable in the first instance by the Collector to a Superior holder. Please see order XXI, Rule 46 of the Civil Procedure Code.

If there is no doubt and no dispute as to the shares of the sub-sharers against whom decrees have been obtained, then these amounts may be deducted and paid into Court, the rest being handed over to the Superior holders. If, however, there is any such doubt or dispute, the Collector may make a reference to the Civil Court, and, until the Court passes orders thereon, may postpone the payment of money to the Superior holders.

( G.R. No. 10067 dated 7th November 1913. )

*J. I.* The position of a Khot, in the villages to which the Bombay Khoti Act I of 1880 has been extended, is that of a superior holder, and in the event of attachment of his village his rights in respect of Khoti profits on his resuming the management of the village would be regulated by Section 162 (1) of the Revenue Code.

Under Section 162 the village or share of a village or share of a village so attached shall be released from attachment, and the management thereof shall be restored to the superior holder on the said superior holder's making an application to the Collector for that purpose at any time within twelve years from first of August next after the attachment.



The Collector shall make over to the superior holder the surplus receipts, if any, which have accrued in the year in which his application for restoration of the village, or share of a village, is made, after defraying all arrears and costs; but such surplus receipts, if any, of previous years shall be at the disposal of Government.

But this rule does not hold good where the village attached is one in the Kolaba district to which the Khoti settlement Act (I of 1880) has not been extended, unless the Khots therein are Sanadi or Vatandar Khots. (*Bhikaji Ramchandra Oke vs Nizam Ali Khan*, 1884,—I. L. R. VIII. Bombay, 525.)

Village, etc.,  
to vest in  
Government,  
if not re-  
deemed with-  
in twelve  
years.

[<sup>a</sup>] **163.** If no application be made for the restoration of a village or portion of a village so attached within the said period of twelve years, or if, after such application has been made, the superior holder shall fail to pay the balance, if any, still due by him within the period prescribed by the Collector in this behalf, the said village or portion of a village shall thenceforward vest in Government free from all incumbrances created by the superior holder or any of the sharers or any of his or their predecessors in title, or in anywise subsisting as against such superior holder or any of the sharers, but without prejudice to the rights of the [<sup>b</sup>] persons in actual possession of the land [<sup>b</sup>].

[<sup>a</sup>] As to the local repeal of section 163, see para. 5 of footnote [<sup>a</sup>] on p. I, *supra*.

[<sup>b</sup>—<sup>b</sup>] These words were substituted for the original words “actual occupants of the soil” by Bom. IV of 1913, s. 70.

But all  
processes to  
be stayed on  
security  
being given;

**164.** Any defaulter detained in custody, or imprisoned, shall forthwith be set at liberty, and the execution of any process shall, at any time,

be stayed, on the defaulter's giving before the Collector or other person nominated by him for the purpose, or if the defaulter is in jail, before the officer in charge of such jail, security in the form of Schedule D, satisfactory to the Collector, or to such other person or officer.

And any person against whom proceedings are taken under this chapter may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed. or on amount demanded being paid under protest,

**165.** When any sale of either moveable or immoveable property is ordered under the provisions of this chapter, the Collector shall issue a proclamation, in the vernacular language of the district, of the intended sale, specifying the time and place of sale, and in the case of moveable property whether the sale is subject to confirmation or not, and, when land paying revenue to Government is to be sold, the revenue assessed upon it, together with any other particulars he may think necessary. Procedure in effecting sales,

Such proclamation shall be made by beat of drum at the head-quarters of the taluka, and in the village in which the immoveable property is situate, if the sale be of moveable property; if the sale be of immoveable property the proclamation shall be made in the village in which such property was seized, and in such other places as the Collector may direct. Proclamation of sales,

*N. I.* For form of proclamation and written notice of sale under Sections 165 and 166, see Appendix D to the rules issued under the Code.

Notification  
of sales.

**166.** A written notice of the intended sale of immoveable property, and of the time and place thereof, shall be affixed in each of the following places, viz., the office of the Collector of the district, the office of Mámlatdár or Mahálkari of the táluka or mahál in which the immoveable property is situate, the chávdi or some other public building in the village in which it is situate, and the defaulter's dwelling-place.

In the case of moveable property, the written notice shall be affixed in the Mámlatdár's or Mahálkari's office, and in the chávdi or some other public building in the village in which such property was seized.

The Collector may also cause notice of any sale, whether of moveable or immoveable property, to be published in any other manner that he may deem fit.

Sale by  
whom to  
be made

**167.** Sales shall be made by auction by such persons as the Collector may direct.

Time when  
sale may be  
made,

No such sale shall take place on a Sunday or other general holiday recognized by Government, nor until after the expiration of at least thirty days in the case of immoveable property, or seven days in the case of moveable property, from the latest date on which any of the said notices shall have been affixed as required by the last preceding section.

Postponement  
of sale,

The sale may from time to time be postponed for any sufficient reason.

Sale of  
perishable  
articles.

**168.** Nothing in the last three sections applies to the sale of perishable articles. Such

articles shall be sold by auction with the least possible delay, in accordance with such orders as may from time to time be made by the Collector either generally or specially in that behalf.

**169.** If the defaulter, or any person on his behalf, pay the arrear in respect of which the property is to be sold and all other charges legally due by him at any time before the day fixed for the sale, to the person appointed under section 146 to receive payment of the land revenue due, or to the officer appointed to conduct the sale or if he furnish security under section 164, the sale shall be stayed. When sale may be stayed.

**G. 1. Giving of security not to affect forfeiture.**—Although proceedings could be stayed under sections 164 and 169 if security were given or the arrears paid, the forfeiture would not thereby be cancelled. The holding of a defaulter cannot be sold unless it is first declared forfeited. (G. R. No. 4891, dated 16th September 1880.)

**G. 2. Date up to which defaulters may pay arrears.**—Under Section 169 of the Land Revenue Code a defaulter is only at liberty to pay the arrears in respect of which the land is to be sold at any time before the day fixed for the sale. The arrears paid after the day fixed for the sale should be refunded to the defaulter. (G. R. No. 6130, dated 20th November 1880).

**G. 3. Expenses when a sale is not completed:—**The rates sanctioned by G. R. No. 2459, dated 26th March 1883, for expenses of completed sales should be extended to sales which have not been completed owing to the arrears due having been paid up on the day fixed for the sale. (G. R. No. 9482, dated 3rd December 1892).

G. 4. If Resolution No. 9482, dated 3rd December 1892, is read with No. 2459, dated 26th March 1883, the alternative rate of  $\frac{1}{8}$  would seem inapplicable when no sale has taken place. Therefore, when sales are stopped due to the arrears being paid up on the day fixed for the sale  $\frac{1}{8}$  is to be calculated on the arrears realized. The intention of the orders was to apply, on the authority of Section 148, a scale of charges corresponding to those laid down by rule under Section 183. (G. R. No. 5304, dated 21st June 1894.)

Sales of moveable property when liable to confirmation.

**170.** Sales of perishable articles shall be at once finally concluded by the officers conducting such sales. All other sales of moveable property shall be finally concluded by the officer conducting such sales, or shall be subject to confirmation, as may be directed in orders to be made by the Collector either generally or specially in that behalf. In the case of sales made subject to confirmation, the Collector shall direct by whom such sales may be confirmed.

Mode of payment for moveable property when sale is concluded at once.

**171.** When the sale is finally concluded by the officer conducting the same, the price of every lot shall be paid for at the time of sale, or as soon after as the said officer shall direct, and in default of such payment the property shall forthwith be again put up and sold. On payment of the purchase-money the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute as against all persons whomsoever.

Ditto when sale is subject to confirmation.

**172.** When the sale is subject to confirmation, the party who is declared to be the purchaser shall be required to deposit

immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold. The full amount of purchase-money shall be paid by the purchaser before sunset of the day after he is informed of the sale having been confirmed, or, if the said day be a Sunday or other authorized holiday, then before sunset of the first office day after such day. On payment of such full amount of the purchase-money, the purchaser shall be granted a receipt for the same, and the sale shall become absolute as against all persons whomsoever.

**G. I. Purchaser shall deposit 25 per centum on purchase money.**—The orders contained in G. R. No. 793, dated 16th February 1871, which forbade the receiving of deposit of 25 per centum on the amount of auction bid of Rs. 5 and under, are to be considered to have been superseded by the provisions of Sections 172 & 173 of the Land Revenue Code. These provisions leave no option but require that the purchaser should deposit 25 per centum on the amount of his bid, whatever that amount may be. (G. R. No. 369, dated 19th January 1882.)

**J. I. The effect of a sale without a forfeiture.**—Section 72 applies to sales of moveable property only.

It cannot be assumed that the Collector has declared under Section 153 the holding to be forfeited from the mere fact that, that would be the legal consequence of failure to pay assessment. If there has been no forfeiture, a mere sale does not extinguish existing incumbrances, nor does it create an absolute title in the purchaser under section 172. (Printed Judgment 70, Govind Vithal Topkhane v. Bhiva Maruti Vani, '95.)

Deposit by  
purchaser in  
case of sale of  
immoveable  
property.

**173.** In all cases of sale of immoveable property, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold.

Purchase-  
money when  
to be paid.

**174.** The full amount of purchase-money shall be paid by the purchaser before sunset of the fifteenth day from that on which the sale of the immoveable property took place, or, if the said fifteenth day be a Sunday or other authorized holiday, then before sunset of the first office day after such fifteenth day.

*G. I.* How to calculate the fifteen days; when is the deposit to be paid.—The period of 15 days for the payment of the balance of purchase-money should count from the date of the conclusion of the sale by the Mámlatdar. The payment of a deposit of twenty-five per cent. to the karkun before the conclusion of the sale is an irregularity. (G. R. No. 809, dated 4th February 1898).

Effect of  
default.

**175.** In default of payment within the prescribed period of the full amount of purchase-money, whether of moveable or immoveable property, the deposit, after defraying thereout the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

*G. I.* This section does not override the provisions of the New Code of Civil Procedure in the

matter of conducting sales by the Revenue Department in the execution of Civil Court decrees. So far as the conduct of other sales by the Revenue Department is concerned there does not appear any necessity to amend this section. (G. R. No. 7538, dated 22nd August 1910.)

**176.** If the proceeds of the sale, which is <sup>Liability of purchaser for loss by re-sale.</sup> eventually made, be less than the price bid by such defaulting purchaser, the difference shall be recoverable from him by the Collector as an arrear of land revenue.

*N. I.* The meaning of the word "eventually" in this section will be made clear by the following question and answer:—

At a sale of immovable property, A bids Rs. 76 but makes default in payment of  $\frac{3}{4}$  of the purchase-money under s. 174, B, at a second sale, bids Rs. 56 and makes default in payment of  $\frac{1}{4}$  of the purchase-money under s. 174. At a third sale, C, bids Rs. 25 and pays it. What difference should be recovered from A and B?

A sale held and concluded after another is *eventually* made for the purpose of s. 176 of the Land Revenue Code. Accordingly Rs. 20, (76—56) should be recovered from A and Rs. 31, (56—25) from B.

*G. I.* Liability of defaulting purchasers in auction sales of the occupancy right of Government land.—The memorandum of the conditions of sale printed as Appendix III. is practically a reproduction of the provisions of the Code, and clause 5, which corresponds to Section 176 should come after clause 7, which corresponds to Section 175. The arrangements of the clauses should be altered accordingly.



The view that section 176 relates only to a purchaser who makes default under Section 174 is clearly correct. There is no legal authority for the practice of applying Section 176 to the case of bidders who fail to deposit twenty-five per cent. of the amount of the bid. Under Section 173 a bid in such a case is null and void, and no penalty is provided by the Land Revenue Code for such a bid, nor is any needed, seeing that the only result is the delay of a few minutes in the completion of a sale. A person who deliberately causes inconvenience by making a bid without intending to fulfil the conditions is liable to punishment under Section 185 of the Indian Penal Code. (G. R. No. 6334, dated 20th August 1895).

Notification  
before re-  
sale.

**177.** Every re-sale of property in default of payment of the purchase-money, or after postponement of the first sale, shall, except when such re-sale takes place forthwith, be made after the issue of a fresh notice in the manner prescribed for original sales.

**G. I. Forfeiture of deposit and re-sale of property.**—Certain land was put up to auction by the Collector in execution of a Civil Courts decree. It fetched a bid of Rs. 26, but the purchaser failed to make full payment. The deposit was forfeited to Government and the property again put up to sale, but no bidder appeared. The whole of the price bid at the former sale was recovered from the defaulting purchaser, and the deposit (being one-fourth of the bid) was credited to Government under Section 174 of the Land Revenue Code. In this case the question raised was what was to be done with remaining three-fourths. With reference to this it was decided that as there was no bidder at the second auction, no sale of property was effected and Section 176 of the Land Revenue Code was inapplicable. The Collector was not authorized to recover the balance (three-fourths of the former bid)~

from the defaulting purchaser inasmuch as no second sale was made; the sum so recovered was therefore ordered to be refunded. (G. R. No. 4779, dated 5th July 1886.)

**178.** At any time within thirty days <sup>Application to set aside sale.</sup> from the date of the sale of immoveable property application may be made to the Collector to set aside the sale on the ground of some material irregularity, or mistake, or fraud, in publishing or conducting it;

but except as is otherwise provided in the next following section, no sale shall be set aside on the ground of any such irregularity, or mistake, unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof.

If the application be allowed, the Collector shall set aside the sale, and direct a fresh one.

**179.** On the expiration of thirty days <sup>Order confirming or setting aside sale.</sup> from the date of the sale, if no such application as is mentioned in the last preceding section has been made, or if such application has been made and rejected, the Collector shall make an order confirming the sale: provided that, if he shall have reason to think that the sale ought to be set aside notwithstanding that no such application has been made, or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.

*J. I.* A Commissioner or any Revenue Authority has no power to review his order annulling a sale held for arrears of Government revenue. (*Baijnath Ram Goenka vs. Nand Kumar Sing* (1907) I. L. R. XXXIV. Calcutta, 677.)

Refund of  
deposit or  
purchase-  
money when  
sale set aside.

**180.** Whenever the sale of any property is not confirmed, or is set aside, the purchaser shall be entitled to receive back his deposit or his purchase-money, as the case may be.

On confirma-  
tion of sale  
purchaser to  
be put in  
possession.

**181.** After a sale of any occupancy [a] or alienated holding has been confirmed in manner aforesaid, the Collector shall put the person declared to be the purchaser into possession of the land [b] and shall cause his name to be entered in the [c] land records [c] as occupant [a] or holder in lieu of that of the defaulter, and shall grant him a certificate to the effect that he has purchased the [d] land to which the certificate refers.

Certificate of  
purchase.

[a] As to the local modification of the words "occupancy" and "occupant," see para. 5 of foot-note [a] on p. I, *supra*.

[b] Words repealed by Bom. IV of 1913, s. 71, are omitted.

[c—c] These words were substituted for the original words "revenue records" by Bom. IV of 1913, s. 71.

[d] This word was substituted for the words "occupancy or alienated holding" by Bom. IV of 1913, s. 71.

### SUMMARY (s. 181)

Section 181 powers under—delegated to

Mamlatdars	...	G	4
Alienated land how disposed of	...	N	1
Certificate of sale	(1) copy sent to registering officer	N	2
	(2) form of	...	G 2
	(3) in execution of a Civil Court's decree	...	N 3
	(4) Stamp duty on	G	1, 3

*N. I.* Under rule 65 (d) of the Rules forfeited alienated land is to be disposed of as unoccupied unalienated land.

**N. 2.** Every Revenue Officer granting a certificate of sale to the purchaser of immoveable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1. Section 89 (4) of the Indian Registration Act XVI of 1908.)

**N. 3.** In the execution of Civil Court's decrees, the auction purchaser cannot be deprived of his right to obtain a certificate of sale even if he applies after 10 years from the date on which the sale becomes absolute. (vide rules 92 & 94 of order XXI. Schedule I. to Act V of 1908).

In the certificate, the date on which the sale becomes absolute should be entered, as in such a case three years would already elapse from the date on which the sale becomes absolute, and the purchaser's application for possession can be rejected as time-barred under article 180 of the Schedule I of the Limitation Act IX of 1908. Rule 14 of the rules published at page 1010 of Vol. I of Local Rules and Orders must be taken to be governed by the Limitation Act.

**G. I. Certificate of sale.**—Certificates of sale granted by the Civil Courts as well as those granted by the Revenue Officers are liable to stamp duty under article 16, Schedule I of the Stamp Act. (G. R. No. 3009, dated 15th June 1880.)

**G. 2. Form of.**—Government Resolution No. 6905, dated 4th October 1882, directing the use of printed forms for certificates of sale granted under Section 181, of the Land Revenue Code is cancelled. The certificates should be engrossed on impressed stamp papers. (G. R. No. 6023, dated 15th August 1883.)

**G. 3. Collector's obligation to grant.**—*Lex non cogit ad impossibilia.* The Collector can only fulfil the obligation imposed upon him. by Section 181,

of granting a certificate of sale when the purchaser produces a stamped paper of such value as the Stamp Act requires that the certificate shall be engrossed upon.

The Collector should tell the purchaser that he would grant the certificate only after the proper stamp was produced and not otherwise. (G. R. No. 1266, dated 11th February 1185.)

G. 4. Powers under this section are delegated to Mamlatdars. (G. R. No. 5295 dated 1st June 1911.)

Bar of suit  
against  
certified  
purchaser.

**182.** The certificate shall state the name of the person declared at the time of sale to be the actual purchaser; and any suit brought in a Civil Court against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed.

J. I. The provisions of Section 182 Land Revenue Code [and Section 317 (now section 66 of V of 1908) of Civil Procedure Code] are to be construed strictly and they do not bar a suit where the plaintiff, although originally a benamidar came honestly into possession. (Vishnu vs. Raghu—Bombay Law Reporter V, 329.)

Application  
of proceeds  
of sale.

**183.** When any sale of moveable property under this chapter has become absolute, and when any sale of immoveable property has been confirmed, the proceeds of the sale shall be applied to defraying the expenses of the sale and to the payment of any arrears due by the defaulter at the date of the confirmation of such sale, and recoverable as an arrear of land revenue, and the surplus (if any) shall be paid to the person whose property has been sold,

The expenses of the sale shall be estimated at such rates and according to such rules as may from time to time be sanctioned by the Commissioner under the orders of Government.

\* Expenses of sale how calculated.

### SUMMARY (s. 183)

Section 183 rules under	...	...	N	1
Expenses of sale—remission or reduction	...	...	G	3
Land on restricted tenure	...	...	G	4
Surplus— (1) when payable to defaulter	...	...	G	1,2
(2) When not so payable			N	2

*N. 1.* As to scale of expenses of sale, see rules printed under Section 152.

*N. 2.* This section applies in cases in which the land is forfeited and its disposal is by way of immediate sale. It does not apply to cases in which the Collector forfeits the land and disposes of it by entering it as Government waste under s. 56. He then closes the account of the defaulter by remitting the arrears payable by the defaulter. If the land is subsequently sold after Government becomes absolute owner in this way then all the sale proceeds will belong to Government.

*G. 1.* Disposal of excess.—As no express provision has been inserted in Section 153 of the Land Revenue Code as to the disposal of the excess, if there should be any, and the second paragraph of Section 183 is also applicable to *all* cases of sales in realizations of arrears, the excess must be treated as a sum to the defaulter's credit, and claimable by his creditors. (G. R. No. 5730, dated 27th October 1879.)

*G. 2.* Collector not bound to sell forfeited occupancy.—Under the Land Revenue Code, Section 153, if the Collector sells the forfeited occupancy,

he must credit the proceeds to the defaulter's account, and, under Section 183, the surplus proceeds, if any, must be paid to the defaulter, but the Collector is not bound to sell the occupancy.

This liberal practice under the Land Revenue Code should be generally followed in cases of default in payment of land revenue, and it should be extended to Thar and Parkar and Upper Sind Frontier. Care should, however, be taken in every case to avoid selling more of a defaulter's property than is sufficient to realize the arrears due. (G. R. No. 7285, dated 2nd December 1881.)

**G. 3. Remission or reduction of expenses.**—Collectors are authorized to remit or reduce the amount of expenses of sale under Section 183. (G. R. No. 6575, dated 19th October 1900 and 5295 dated 1st June 1911.)

**G. 4. Land on restricted tenure when forfeited** should be sold on the restricted tenure. If no proper bid is offered at the sale the land should be entered as Government waste. (G. R. No. 5964, dated 23rd June 1911.)

Surplus not to be paid to creditors, except under order of Court.

**184.** The said surplus shall not, except under an order of a Civil Court, be payable to any creditor of the person whose property has been sold.

**G. I. Claims of Creditors.**—After the arrears have been recovered from the sale proceeds under Section 183, the excess, if any, must be treated as a sum to the defaulter's credit and is claimable by his creditors. (G. R. No. 5730, dated 27th October 1879.)

Certified purchaser liable only for land-revenue subsequently due.

[<sup>a</sup>] **185.** Notwithstanding anything in section 136, the person named in the certificate of title as purchaser shall not be liable for land revenue due in respect of the land for any period previous to the date of the sale.

[a] This section was substituted for the original section by Bom. IV of 1913, s. 72.

**G. 1. Distribution of sale proceeds of forfeited occupancies.**—The purchaser of forfeited occupancies sold at once should not be required to pay one anna in each rupee of the price realized to local funds, nor should one anna in the rupee of the wholesale proceeds be credited to local cess. But as the one anna cess is chargeable on arrears of assessment and recoverable as land-revenue the sale proceeds of such lands should be credited in accordance with Section 183 of the Code.

(a) to expenses of sale

(b) to arrears of

(1) land revenue

(2) one anna cess

the surplus if any being paid to the defaulter. (G. R. No. 2002, dated 10th March 1883.)

**G. 2. Purchaser of forfeited occupancy must enter into an agreement.**—In the case of a sale of an occupancy for arrears of revenue, the purchaser of a forfeited occupancy does not succeed either to the rights or liabilities of the previous occupant and in order to bind him he must enter into responsibility on his own account and for this he must enter into an agreement in the form of Appendix D (now B) to the rules. (G. R. No. 2600, dated 31st March 1883.)

**G. 3. Sale proceeds of land originally granted free of occupancy price.**—Persons to whom Government have granted lands for cultivation free of occupancy price on condition that if they did not desire to retain the lands they should resign them to Government but not transfer to any other person, are not entitled to the balance of sale proceeds of such lands, if they are put to sale for the recovery of Government revenue, after the Government demands have been satisfied. (G. R. No. 6806, dated 6th October 1887.)



*J. I.* The liability of an auction-purchaser at a sale (held under Act. XI of 1859, Revenue Sale Law) to pay arrears of Government revenue arises from the date of the sale, when the title vests in the purchaser (and not from the date of the sale certificate). Laws regulating the relations of an ordinary creditor and debtor do not apply to the realization of land revenue. When therefore a proprietor of an estate makes a payment expressly for a later period, when there were earlier arrears, the Collector was fully competent to set off the amount paid against the earliest arrears due. (*Ganga Bishun Singh vs. Mahomed Jan*, 1904. I. L. R. XXXIII, Calcutta, 1193. ).

Claims to  
attached  
moveable  
property  
how to be  
disposed of.

**186.** If any claim shall be set up by a third person to moveable property attached under the provisions of this chapter, the Collector shall admit or reject his claim on a summary inquiry held after reasonable notice. If the claim be admitted wholly or partly, the property shall be dealt with accordingly. Except, in so far as it is admitted, the property shall be sold and the title of the purchaser shall be good for all purposes, and the proceeds shall be disposable as hereinbefore directed.

*G. I.* Delegation of powers to Mamlatdars and Mahalkaris.—The Collectors are authorized to delegate the powers exercised by them under Section 186 of the Land Revenue Code to Mamlatdars and Mahalkaris when the adoption of such a course may appear to them desirable. (G. R. No. 8785, dated 19th November 1889.)

What moneys  
leviable  
under the  
provisions of  
this chapter.

**187.** All sums due on account of land revenue, all quit-rents, nazránas, succession duties, transfer duties and forfeitures, and all cesses, profits from land, emoluments, fees, charges,

penalties, fines, and costs payable or leviable under this Act or under any Act or Regulation hereby repealed, or under any Act for the time being in force relating to land revenue;

and all moneys due by any contractor for the farm of customs-duties, or of any other duty, or tax, or of any other item of revenue whatsoever and all specific pecuniary penalties to which any such contractor renders himself liable under the terms of his agreement ;

and also all sums declared by this or by any other Act or Regulation at the time being in force [ <sup>a</sup> ] or by any contract with the Secretary of State for India in Council [ <sup>a</sup> ] to be leviable as an assessment, or as a revenue demand, or as an arrear of land revenue ;

shall be levied under the foregoing provisions of this chapter [ <sup>b</sup> ] and all the foregoing provisions of this chapter shall, so far as may be, be applicable thereto [ <sup>b</sup> ].

And all persons who may have become sureties under any of the provisions of this Act or of any Act or Regulation hereby repealed, or for any such contractor as aforesaid for any sum of money shall, on failure to pay the amount or any portion thereof for which they may have become liable under the terms of their security-bond, be liable to be proceeded against under the provisions of this chapter as revenue-defaulters [ <sup>c</sup> ] and all the foregoing provisions of this Chapter shall, so far as may be, be applicable to such persons [ <sup>c</sup> ]

And in the event of the resumption of any such farm as is aforesaid, no person shall be entitled to

Sureties  
liable as  
revenue-  
defaulters.

On resump-  
tion of a  
farm, no pay-

ments made  
to contractor  
in advance  
to be admit-  
ted.

credit for any payments which he may have made  
to the contractor in anticipation.

The recovery  
of free grants  
as arrears of  
revenue in  
case of misuse.

[d] And any person who has received from  
Government a free grant of money for any  
agricultural purpose, subject to the proviso that  
he shall refund the same on failure to observe  
any of the conditions of the grant, shall, on  
failure to observe any such condition and to repay  
the said sum to Government, be liable to be  
proceeded against under the provisions of this  
Chapter as a revenue-defaulter; and all the  
foregoing provisions of this chapter shall, so far  
as may be, be applicable to such person.

[a—a] These words were inserted by Bom. IV of 1905, 1st Sch.

[b—b] These words were added by Bom. IV of 1913, s. 73 (1).

[c—c] These words were added by Bom. IV of 1913, s. 73 (2).

[d] This paragraph was added by Bom. IV of 1913, s. 73 (3).

### SUMMARY (s. 187)

Section 187—(1) object of new section N 1

(2) applicable to

(a) amounts payable  
by Inamdars to  
Watandars G 1,3

(b) boundary mark  
charges ... J 1

(3) not applicable to

(a) fine imposed by  
Forest officer for  
breach of contract G 7

(b) illegal local cess on  
Irrigation miscel-  
laneous receipts G 4

	(c) penalty alluded to in Irrigation security bonds	G 5
	(d) penalty for neglecting to remove trees in time by a contractor	... G 6
Moneys recovered by Revenue Department for other Departments how distributed	(1) notice free etc. to Land Revenue ...	G 2
	(2) Penalty under s. 148 to Département concerned	G 2

*N. I.* This new section gives effect to the intention of the framers of the Code that all the processes set forth in chapter XI of the Code should be available for the collection of the dues specified in it.

For instance only moneys due by a contractor for the farm of customs duties could formerly be levied under this chapter; but in levying the amount there was no authority to impose  $\frac{1}{2}$  fine under section 148. This defect is now removed by the insertion of the following words:—

“All the provisions of this chapter shall,  
So far as may be, be applicable thereto.”

Similarly  $\frac{1}{4}$  fine can now be recovered for not paying Tagai instalment on the due date.

*G. I.* Recoveries of amounts payable as remuneration.—Amounts payable by Inamdars to Watandars, on account of their remuneration, if not duly paid, are recoverable as arrears of land revenue under the provisions of Section 187 of the Land Revenue Code. (G. R. No. 3378, dated 2nd May 1883.)

**G. 2. Distribution of moneys belonging to other Departments recovered by Revenue Department.**—In cases in which the recoveries of revenue or moneys due to other Departments are made by the officers of the Revenue Department under Section 187 of the Land Revenue Code, the notice fee, cost of arrest and expenses of sale leviable under Sections 152, 158 and 183 respectively, should be credited to "Land Revenue", and the penalty or interest leviable under Section 148 should be credited to the Department for which the recovery is made. (G. R. No. 9587, dated 4th December 1884.)

**G. 3. Sections 17 and 28 of the Hereditary Officer's Act read together with Section 187 of the Land Revenue Code justify the ruling in G. R. No. 3378, dated 2nd May 1883 (order No. 1 above). (G. R. No. 1166, dated 13th February 1886).**

**G. 4. Local fund which cannot be recovered as land revenue.**—Irrigation miscellaneous receipts are not to be regarded as ordinary land-revenue. Local fund cess cannot therefore be levied on them. (G. R. No. 6959, dated 2nd October 1890.)

**G. 5. There is nothing in the Irrigation Act (Bombay VII. of 1879) which would authorize the recovery, as an arrear of land revenue, of the penalty alluded to in the form of the security bond required to be executed by an applicant who is not the registered occupant of the land he wishes to irrigate. (G. R. No. 22 W. I.—105 and 23 W. I.—106, P. W. D., dated 19th January 1892, and G. R. No. 8882, dated 11th November 1892.)**

**G. 6. A penalty for neglecting to remove trees by a specified date is not recoverable under this section, as the contractor was not a contractor for the farm of any item of revenue. A deposit of substantial security should therefore be taken for the fulfilment of contracts of this kind. (G. R. No. 4064, dated 7th May 1894.)**

G. 7. The balance of the fine imposed by the Divisional Forest Officer upon contractors for the breach of his contracts is not recoverable as an arrear of land revenue. (G. R. No. 6934, dated 18th August 1894).

J. I. Boundary mark charge recoverable as arrears of land revenue.—The effect of Section 187 of the Bombay Land Revenue Code (Act V. of 1879) is to make the provisions of Sections 153 and 56 and also those of Section 155, applicable to sales for the recovery of charges assessed under Section 122 in connection with boundary marks.

Such charges may be recovered either by forfeiture of the occupancy in respect of which the arrear is due, or by sale of the defaulter's immoveable property other than the land on which the arrear is due. In the former case the land is sold free from all incumbrances created by the occupant. In the latter case the rights of incumbrancers are not touched. (Venkatesh Ramkrishna *vs.* Mhal Pai Bin Naru Pai,—I. L. R. Bombay, Volume XV., page 67, 1891.)

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## CHAPTER XII.

### PROCEDURE OF REVENUE OFFICERS.

**188.** In all official acts and proceedings a revenue officer shall, in the absence of any express provision of law to the contrary, be subject as to the place, time, and manner of performing his duties to the direction and control of the officer to whom he is subordinate, Subordination of revenue officers.